SUPREME COURT, U. S.

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Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-265

NOLAN ESTES, ET AL.,

Petitioners,

versus

EDDIE MITCHELL TASBY, ET AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Petitioners pray that writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on July 23, 1975.

Petitioners are the members of the Board of Trustees of the Dallas Independent School District and its General Superintendent. At the time of filing this Petition Bill C. Hunter, Emmett J. Conrad, Eugene S. Smith, Jr., Nancy E. Judy, Kathlyn Gilliam, Sarah Haskins, Robert Medrano, Charles W. Fletcher and Glyn Strother are the Trustees of the Dallas Independent School District and Nolan Estes is its General

Superintendent. Petitioners were Defendants in the District Court and Appellees and Cross-Appellants in the Court of Appeals.

The Respondents were Plaintiffs in the District Court and Appellants and Cross-Appellees in the Court of Appeals. The Respondents are Eddie Mitchell Tasby and Philip Wayne Tasby, by their parent and next friend, Sam Tasby; Evelyn Denise Lafayette and Darline Lafayette, by their parent and next friend, Ludie Ann Cobbin; John L. Morgan, Leon M. Morgan, Emanuel Morgan and Jacqueline Morgan, by their parent and next friend, Mary Jane Morgan; Jacqueline Denise Yarborough, Katherine Yvette Yarborough and Willie Jackson, by their parent and next friend, Bettye Jackson; Nelba Ann Crouch, Allen LaMeche and Danny O'Keefe, by Thelma Lee Crouch; Nettie Marie Cates, by her parent and next friend, Bobbie Lean Cobbin; Tony Jefferson, Beulah Jefferson, Arthur Jefferson, Yolanda Jefferson and Jacqueline Jefferson, by their parent and next friend, Ruth Jefferson; Ora Clara Woods and James Edward Woods, by their parent and next friend, Helen Woods; Angela Medrano and Yolanda Medrano, by their parent and next friend, Richard Medrano; and the alleged class or classes they seek to represent in this action.

The Intervenor-Respondents are various parties who at various times have been permitted to intervene in these proceedings. The Intervenor-Respondents are:

1. Herman Bond, et ux, Individually and as next friend for his son, Steven Bond, as representative of the class of Oak Cliff residents in the Kimball-Carter-

South Oak Cliff School District areas and areas adjacent thereto in the City of Dallas.

2. Donald E. Curry, Gerald A. Van Winkle, Joe M. Gresham, Edmund S. Rouget and Robert A. Overton, Individually and as next friends for their children.

3. James T. Maxwell.

4. The City of Dallas.

5. Donald Abercrombie, his wife, Helen Abercrombie, and their children, Donna and Donald; C. S. Ludwick, his wife, Ann Ludwick, and their children, Connie, Mark and Scott; Jerry Hamilton, his wife, Martha Hamilton, and their children, Pamela, Jeri and Patricia; Wayne Dickenson, his wife, Betty Dickenson, and their children, Delisa and Drew; Anthony Bascone, his wife, Rebecca Bascone, and their children, Kathy, Karen and Amy; R. D. Morgan, his wife, Janice Morgan, and their child, Carol; and R. H. Mason, his wife, Joyce Mason, and their children, Susan, Mark and William; also known collectively as "Oak Cliff Citizens".

Unless otherwise stated, reference in this Petition to "Respondents" refers to the Plaintiffs in the District Court.

OPINIONS BELOW

The orders and judgments of the District Court are set forth in Appendix "A" and are reported in part in 342 F.Supp. 945. The opinion-mandate of the Court of Appeals has not yet been reported. The opinion-

mandate of the Court of Appeals is set forth in Appendix "B". Since this is a school desegregation case, the Court of Appeals has processed the appeal to that Court in accordance with Part III of its decision in *Singleton* v. *Jackson Municipal Separate School District*, 419 F.2d 1211, 1222, and issued its opinion of July 23, 1975, as and for the mandate. Under these circumstances the Court of Appeals does not enter a separate "judgment" in this or other school desegregation cases processed under its *Singleton* rule. Therefore, the opinion entered by the Court of Appeals on July 23, 1975, is the "judgment" of the Court of Appeals as well as its opinion-mandate.

JURISDICTION

The judgment of the Court of Appeals was entered on July 23, 1975. This petition for certiorari was filed within 90 days from July 23, 1975. The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. Section 1254(1).

QUESTIONS PRESENTED

1. May the District Court, consistent with the Equal Protection Clause, as to that part of a school desegregation plan dealing with student assignment, reject massive busing of students in formulating a remedy to eliminate the vestiges of a de jure dual school system in the eighth largest city school system in the nation and instead:

(a) utilize for secondary schools the school desegregation tools of satelliting from noncontiguous zones, closing of schools, and the re-

drawing and extending of the attendance zones of the remaining schools so as to bring into the neighborhood zones served by those schools residential areas containing predominantly black students, and

(b) utilize for elementary schools the tool of classroom clustering providing each student with simultaneous two-way oral and visual communication via television cable and equipment between two or more schools and affording each student actual physical contact with students of another race in all aspects of the total educational program, academic, social and extracurricular.

2. Does Section 258 of the Equal Educational Opportunities Act of 1974 (Pub.L. 93-380, Title II, Sec. 258, Aug. 21, 1974, 88 Stat. 520, 20 U.S.C. Section 1757) prohibit the Court of Appeals and District Court from making any orders requiring the transportation of elementary or secondary students from one elementary or secondary school to another pursuant to a plan requiring such transportation for the racial desegregation of schools in time for the start of the second semester of the 1975-76 school year if the beginning of the 1975-76 academic year was August 18, 1975.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States provides in pertinent parts as follows:

". . . nor shall any State * * * deny to any person within its jurisdiction the equal protection of the laws."

Section 258 of the Equal Educational Opportunities Act of 1974 (Pub.L. 93-380, Title II, Sec. 258, Aug. 21, 1974, 88 Stat. 520, 20 U.S.C. Section 1757) provides as follows:

"(a) The Congress finds that —

(1) the forced transportation of elementary and secondary school students in implementation of the constitutional requirement for the desegregation of such schools is controversial and difficult under the best planning and administration; and

(2) the forced transportation of elementary and secondary school students after the commencement of an academic school year is educationally unsound and administratively inefficient.

"(b) Notwithstanding any other provisions of law, no order of a court, department, or agency of the United States, requiring the transportation of any student incident to the transfer of that student from one elementary or secondary school to another such school in a local educational agency pursuant to a plan requiring such transportation for the racial

desegregation of any school in that agency, shall be effective until the beginning of an academic school year.

"(c) For the purpose of this section, the term 'academic school year' means, pursuant to regulations promulgated by the Commissioner, the customary beginning of classes for the school year at an elementary or secondary school of a local educational agency for a school year that occurs not more often than once in any twelve-month period.

"(d) The provisions of this section apply to any order which was not implemented at the beginning of the 1974-75 academic year."

STATEMENT OF THE CASE

This is a school desegregation action brought in the District Court against the Dallas Independent School District by both blacks and persons alleging to be Chicanos asserting de jure segregation of each class and seeking the establishment of a unitary school system for each class. Respondents invoked the jurisdiction of the District Court pursuant to Title 28 U.S.C. Section 1331 alleging this action arises under the Fourteenth Amendment and the amount in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand ($10,000.00) Dollars and pursuant to Title 28 U.S.C. Sections 1343(3) and (4), alleging this to be a civil action seeking injunctive relief to end denials of equal protection of the law and alleging that this action was further filed pursuant to the provisions of 42 U.S.C. Sections 1981, 1988, 2000c-8 and 2000d.

(Complaint, paragraph I) Respondents also allege a violation of the Thirteenth and Fourteenth Amendments and 42 U.S.C. Sections 1981, 1983 and 2000d. (Complaint, paragraph XII)

At issue is the appropriateness of the student assignment portion of the remedy ordered by the District Court to eliminate the vestiges of a state-imposed dual system found to exist in the then eighth largest city school district in the nation, comprising some 351 square miles with in excess of 180,000 students, 180 school campuses, a total budget in excess of $150,000,000.00 and an operating budget of $106,500,000.00. It is 35 miles from the northern part of the School District to the southern part. Although the boundaries of the City of Dallas and the School District are not coterminous, there were 844,401 persons within the corporate limits of the City of Dallas according to the 1970 census and more than 1,000,000 persons living in the entire Urban Metropolitan Area. (Respondents' Exhibit 34; T. 491, 490, 472, 471, 523, 524)

The School District never had freedom of choice nor free transfer provisions. (T. 437-439) The School District itself actually owned only 13 buses and those were specially equipped and used to transport orthopedically handicapped children. (T. 586) The School District had the use of 43 other school buses transporting only 4,300 students. (T. 685) Use of these 43 buses was arranged under contract with the County Board of Education. (T. 1285) Under then state law students who lived within two miles of their school or students who lived within two miles of public transportation (a city bus route) were not provided free school transportation, and only students in the School

District living in far, remote areas more than two miles from a public city bus were furnished transportation. Since most of the School District's students lived within two miles of their school or within two miles of a city bus route, there were only these 43 buses used to transport these 4,300 students. Traditionally the students in this School District have not been furnished transportation. (T. 685, 696, 697)

Pursuant to directions from the Court of Appeals (444 F.2d 124) to make full written findings of fact and conclusions of law on the merits of this action in light of principles enunciated in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, the District Court upon trial on the merits found that a vestige of a dual system remained as to black students, that there had been no showing of de jure segregation of the alleged Mexican-American class and directed Petitioners to file their plan for the establishment of a unitary school system by a specified date. Petitioners filed their plan within the time provided and Petitioners formulated such plan within the directions given by the District Court that Petitioners in devising such plan:

1. Consider the Mexican-American as a separate ethnic group;

2. Avoid massive busing for the sole purpose of mixing bodies; and

3. Consider the proposal of the Texas Education Desegregation Technical Assistancecenter, operated through the University of Texas Extension Bureau un-

der Title IV Civil Rights Act of 1964, located at Austin, Texas (TEDTAC) for use of television in elementary schools.[1]

The TEDTAC proposal ordered by the District Court provides for clustering elementary schools by two-way audio-visual contact by television as well as by actual physical contact between the races in the academic, social and extra-curricular aspects of the educational program. The elementary television plan was conceived by the project administrator of TEDTAC which desegregation assistance agency was selected by the District Court at the Respondents' request. (T. 1185, 1187) Although TEDTAC initially developed a series of alternatives divided into three different plans (T. 973) the project manager, while testifying as Respondents' witness, advised the District Court that the elementary television plan was his preference for the Dallas Independent School District and not the alternative Respondents adopted as their plan for the elementary schools. (T. 974, 988, 1185)

The District Court's remedy for elementary schools is contained in its August 2, 1971, Judgment. The District Court's remedy for junior and senior high schools is contained in its August 12, 1971, Order. The provisions of these two orders constitute the District Court's Final Desegregation Order as to student assignment. The student assignment plan ordered by

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1 Respondents adopted as their plan other TEDTAC proposals for elementary and secondary schools with certain modifications. It is Petitioners' contention that 35,000 elementary students and 35,000 secondary students out of the School District's then 180,000 students would be bused under the plan proposed to the District Court by Respondents and that this number would constitute "massive busing" in the sense sought to be avoided by the District Court.

the District Court for junior and senior high schools is as proposed by the Petitioners. While the student assignment plan ordered by the District Court for elementary schools embodied in the elementary television plan differs in specifics from the concept as developed by TEDTAC and as embellished and proposed by Petitioners, Petitioners endorse the elementary television plan as ordered by the District Court. At all times subsequent to the time the District Court formulated its Final Desegregation Order it has been Petitioners' position that such remedy is the appropriate remedy under the facts of this particular case to eliminate the vestiges found by the District Court of a state-imposed dual system.

Under the remedy formulated by the District Court the School District operated 18 high schools, 23 junior high schools and 125 elementary schools. (Petitioners' Exhibit 20, pp. 39, 40, 42, 43, 45-51; T. 859-862)

Respondents used a 90%-10% ratio formula to establish the number of schools that were white or that were black. The District Court in its July 16 Order (p. 22) relied on Respondents' 90%-10% ratio formula in holding that vestiges of a dual system remained. (Respondents' Exhibits 4, 5; T. 262) By application of Respondents' ratio formula the remedy formulated by the District Court for secondary schools eliminated every all-white high school; left only one predominantly black high school; eliminated every all-white junior high school with the exception of a small seventh and eighth grade building located in a remote area; and left only three predominantly black junior high schools.

The remedy formulated by the District Court for secondary schools closes three high schools and one junior high school, and reassigns those students and redraws and extends the school zones of the remaining secondary schools so as to bring into the attendance zones served by those schools residential areas containing predominantly black students, with the exception of three high schools and five junior high schools, all located in the far northernmost part of the School District. In order to assign black students to these eight northernmost schools, noncontiguous satellite zones from the near intercity residential areas containing predominantly black students were created and the black students from those satellite attendance zones were assigned to these outlying predominantly white secondary schools.

The remedy formulated by the District Court for elementary schools through the elementary television plan in effect provides for the clustering of elementary schools so as to provide an approximate 2-to-1 ratio of Anglo *classrooms* to minority *classrooms*; that elementary students attend the neighborhood school to which assigned by the School District; that class schedules and courses of study be established so as to provide each student with a daily minimum of one hour of contact with students of another race by simultaneous two-way oral and visual communication via television cable between two or more schools; that classrooms be identifiably paired so that approximately two Anglo classrooms are paired with one minority classroom for the academic year; that studio classrooms be equipped so the teacher and students seated therein have the ability to see and hear the teacher and students in the other

paired classroom seated in studio rooms at their school; that equipment as deemed most engineering-ly feasible to provide this simultaneous two-way oral and visual contact be leased or installed between the schools; that there be at least one weekly visit of an educational nature during regular school hours between the two or more paired classrooms that daily communicate with each other; that such visit afford not less than three hours of personal contact between the paired classrooms; that transportation for such visits be provided; that there be two to seven studio classrooms at each school; that the position of Cluster Director be created to administer all aspects of the program in each cluster to whom building principals shall report; that a training program be designed for cluster directors; that cluster directors appoint a faculty advisory committee composed of teachers from each school and multi-ethnic in make-up; that cluster directors appoint a parent advisory committee composed of parents from each school and multi-ethnic in make-up; that within a cluster there be equality of program and teaching material.[2]

The Court of Appeals affirmed in part, reversed in part and remanded with directions. In so doing the Court of Appeals by mandate directed the District Court in part to formulate in time for the start of the

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2 On August 20, 1971, the Court of Appeals granted Respondents' motion for partial stay of the District Court's August 2, 1971, Judgment pending final disposition on appeal and ordered "... that no monies are to be spent, nor contracts entered into, for the acquisition (whether by purchase, lease or otherwise) or installation of any equipment needed to carry out the television plan (including building modifications in preparation for the installation of electronic equipment) or the hiring of any technicians or other employees needed to install or maintain the television communications system during this stay."

second semester of the 1975-76 school year elementary and secondary student assignment plans which comport with the directives of the Supreme Court and of the opinion-mandate of the Court of Appeals. The 1975-76 academic year commences August 18, 1975.

The Court of Appeals directed the District Court to use and adopt the techniques directed in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, in dismantling the dual school structure of the Dallas Independent School District by the start of the second semester of the 1975-76 academic year.[3]

REASONS FOR GRANTING THE WRIT

1. The Court Below has Decided a Federal Question in a Way In Conflict with This Court's Decision in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1.

The decision below in effect interprets *Swann* to establish the legal principle that as a matter of law busing is mandatory in order to desegregate a large urban metropolitan district. The main reason for seeking certiorari in this case is to test this erroneous interpretation of *Swann*.

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3 Partial chronology: Action filed October 6, 1970; TEDTAC assistance requested by District Court Order of October 20, 1070; trial on merits commenced July 12, 1971; by Order of July 16, 1971, District Court directed Petitioners to file plan on July 23, 1971; on July 23, 1971, trial on merits continued as to hearings on various plans; District Court's various judgments, orders and written opinions on merits made on several dates in August, 1971; briefs of Petitioners and Respondents filed in Court of Appeals in September of 1971; pretrial conference conducted by Court of Appeals October 26, 1971; appeal submitted on oral argument in Court of Appeals December 2, 1971.

That the Court of Appeals interprets *Swann* to establish the legal principle that as a matter of law busing is mandatory is made abundantly clear in the following paragraph and footnote in its opinion-mandate:

> "It is imperative that the dual school structure of the DISD be completely dismantled by the start of the second semester of the 1975-76 academic year. The district court should immediately take the necessary steps, using and adapting the techniques discussed in *Swann*, supra, to make that objective a reality.(5)"

> "(5) We believe that the DISD has sufficient financial resources to comply with this directive. *School buses*, although not presently owned by the DISD in sufficient numbers to carry out *meaningful desegregation*, can be leased or purchased with the funds which, but for our decision, would have been used to implement the district court's elementary 'television plan'." (Emphasis ours)

Except as might be inherent in its discussion of school construction, the Court of Appeals does not identify in its opinion techniques other than school buses. The Court of Appeals avoids even the suggestion of busing until it reaches this quoted language at the end of its opinion. But at that point footnote 5 discloses all too clearly the interpretation placed on *Swann* by the Court of Appeals. That Court envisions

school buses as the only technique to carry out meaningful desegregation to the exclusion of other concepts discussed in *Swann*. Although elsewhere in its opinion the panel of the Court below refers to that Court's own en banc decisions in both *Cisneros v. Corpus Christi Independent School District*, 467 F.2d 142, cert. denied 413 U.S. 920 and 413 U.S. 922, rehearing denied 414 U.S. 881, and *United States v. Texas Education Agency*, 467 F.2d 848; nowhere in its opinion does the panel suggest the appropriateness of techniques discussed in the remedy provisions of those two decisions even though both such en banc decisions were decided subsequent to *Swann*.[4] The Court below goes so far as to stress the exclusive role it places upon school buses by emphasizing availability of sufficient funds to acquire the one and only means considered by that Court to be appropriate.

It has become all too prevalent to hear *Swann* referred to as "the busing case" as though it orders and directs the mandatory use of that tool in every situation. Such is not the case. In recognizing bus transportation as but one tool of desegregation this Court was doing so in a case involving a school district that had traditionally used bus transportation for large numbers of students. It was under those particular conditions in that particular school community that the Court treated busing as a tool of desegregation. None of the circumstances present in Charlotte-Mecklenburg is present in the Dallas district.

In recognizing bus transportation as one tool of desegregation for Charlotte-Mecklenburg this Court

4 Two members of the panel below dissented from the remedy provisions of those two en banc decisions.

was doing so under the following facts. In the year prior to the hearing, out of 84,000 pupils in Charlotte-Mecklenburg, 23,600 of them were transported each day by bus an average of 15 miles one way for an average trip requiring over one hour. (pp. 6, 30) The Court emphasized that Charlotte-Mecklenburg allowed almost unlimited transfer privileges (p. 30) and already owned buses and had additional ones available and had the capacity to acquire other buses. (p. 30)

It was under such circumstances as this that this Court treated busing as a tool of desegregation. None of these facts applies to Dallas. The number of Dallas students who were furnished transportation in the year prior to the hearing was minimal, only 4,300 out of 180,000. The Dallas district had no free transfer privileges and its students were not accustomed to moving vast distances about the school district at their will through the exercise of free transfer provision rights. None of the conditions touched on by this Court as permitting busing as a tool in Charlotte-Mecklenburg was present in Dallas. The Dallas district has never allowed freedom of choice.

The thrust of the decision below is to elevate a "tool" to a "principle" of law applicable to all school districts, large and small, rural and urban, or mixed town-rural, without regard to specific facts with respect to the individual circumstances. To apply this one "tool" of *Swann* across the board without exception to solve all desegregation problems in all school districts without regard to individual facts and circumstances is an error into which the Court of Appeals has fallen and is a circumstance that cries for redress.

Here Petitioners seek consideration of other "tools" to deal with the "vestiges" of a state-imposed dual school system found to exist by the District Court.

For secondary schools Petitioners seek consideration of satelliting, closing of schools and the redrawing and extending of attendance zones. The District Court approved of these means using the same ratio-formula approach to desegregate them as was used to determine that they were predominantly one-race schools.

For elementary schools Petitioners seek consideration of classroom clustering providing each student with simultaneous two-way oral and visual communication via television cable and equipment between two or more schools and affording each student actual physical contact with students of another race in all aspects of the total educational program, academic, social and extra-curricular. The District Court approved of such a unique and innovative approach.

Observations made by Justice Powell concurring in part and dissenting in part in *Keyes v. School District No. 1, Denver, Colorado*, 413 U.S. 189, as to the unfortunate results in metropolitan public education if *Swann*'s implications are misconstrued as necessarily requiring massive transportation of students are valid and deserve consideration by the Court in a case such as presented by this petition.

The Dallas Independent School District is a large urban school district. The District Court arrived at a new approach for elementary schools (the elementary

television plan) and made proper use of existing approaches (satelliting and changing of attendance zones) for junior and senior high schools. Scholarly voices which perhaps set in motion support for the use of busing as a means of school integration now appear to recant. School authorities and lower courts throughout the nation face dilemma and confusion concerning transportation and racial quotas as they undertake to find solutions to one of this nation's most awesome problems. An expression from this Court putting at an end the erroneous interpretation of *Swann* as made by the Court of Appeals would be of immeasurable help to all who must deal with this matter on a more or less constant basis.

The Court of Appeals has reached a decision in conflict with *Swann*, and this Court is urged here to resolve the conflict in view of the national concern as to:

(a) whether busing is a mandatory tool of desegregation, and

(b) whether there are constitutional alternative "tools" to busing in large urban metropolitan school districts.

2. The Importance of the Issue and the Need for Clarification.

The issues here involved are especially important to large urban metropolitan school systems and to their millions of school patrons throughout the nation. In the urban condition alternatives to massive busing

must be found. Cf., *S.E.C. v. United Benefit Life Insurance Company*, 387 U.S. 202, 207, where certiorari was granted because of the importance of the issue and the need for clarification.

Under *Swann* busing is not a mandatory tool of desegregation and *Swann* permits constitutional alternative "tools" to busing in large urban metropolitan school districts; however, to the extent that courts such as the Court below misconstrue *Swann*, further word from this Court is needed to put at rest misconceptions as evidenced by the opinion below.

Dr. David F. Mathews who has recently been confirmed as the new Secretary for the Department of Health, Education and Welfare, in criticizing busing school children to achieve racial desegregation, has been quoted by the press as making the following observation in his confirmation hearing:[5]

> " 'If it is ineffective, surely we are inventive enough people to produce something else.' "

We are inventive enough. The Petitioners and District Court have been inventive enough to produce something else. Unfortunately, so long as lower Courts such as the Court of Appeals continue to misread *Swann* as the "busing case", it will be impossible for inventive alternatives to ever be tested.

Consider how farsighted and inventive the District Court was. Dr. James S. Coleman, a professor of sociology at the University of Chicago and senior

5 The Dallas Morning News, Sunday, July 27, 1975, at p. 17 A.

author of the landmark 1966 study undertaken for the U.S. Office of Education which many suggest served as a principal basis for the concept of busing school children to eliminate de jure dual school systems, has more recently pointed up the failure of forced busing in large cities saying:[6]

> "In the large cities, what I call induced integration, usually brought about as a result of court action, seems to be self-defeating."

Moreover, he finds that there is now even "less racial integration than there was then" (in 1968) in some areas as "the result of resegregation." However, Professor Coleman, in a recent article,[7] raises the question "But then what is to be done to achieve an integrated society?" Professor Coleman then goes on to discuss what might be done. He discusses many things but of particular interest here is this observation made by Dr. Coleman:

> "It means the use of a variety of techniques for bringing together blacks and whites who live apart, techniques now regarded as unacceptable by the courts and the Department of Health, Education and Welfare.
>
> "These include the holding of joint classes and other activities over a period of weeks; . . ."

One court has been ahead of Dr. Coleman, the District Court below. Consider the creative remedy formulated by the District Court for elementary schools

6 The National Observer, June 7, 1975, p. 1.

7 Dallas Times Herald, July 27, 1975, p. B-3.

which in part provides that there be at least one weekly visit of an educational nature during regular school hours between the two or more paired classrooms that daily communicate with each other and that such visit afford not less than three hours of personal contact between the paired classrooms.

But the Court of Appeals dismisses a technique for bringing together blacks and whites who live apart with a holding that "The plan, although novel in approach, is incompatible with all the jurisprudence of the past twenty years as to public school desegregation, and hence fails to pass muster." To the Court of Appeals all techniques are incompatible with the jurisprudence of the past twenty years unless they involve extensive use of the school bus. Creative thinking is at an end so long as *Swann* and the mandate to bus are thought by lower Courts to be synonymous.

3. The Court of Appeals has Ignored Section 258 of the Educational Opportunities Act of 1974 Enacted to Provide Educationally Sound and Administratively Efficient Remedies in Actions Involving Racial Desegregation in Public Schools Requiring Supreme Court Review of This Important Federal Question.

It must be assumed that the Court of Appeals was aware of the Act and that therefore the Court intended to hold by implication that the Act is unconstitutional. The question of constitutionality of this Act of

Congress on this subject of great public import and concern is surely one for determination by the Supreme Court.

The inevitable result of the decision of the Court of Appeals mandates an order of the District Court requiring transportation of students from one elementary or secondary school to another pursuant to a plan requiring such transportation for the racial desegregation of public schools in order to eliminate the vestiges of a state-imposed dual school system at the start of the second semester of the 1975-76 school year. The Act prohibits any order requiring student transportation at the start of the second semester of the 1975-76 school year. As to school desegregation plans Congress has restricted Federal Court implementation of such plans to the beginning of a school year only. The Act prohibits the directions given the District Court in this regard by the Court of Appeals; yet the Court of Appeals completely disregards the Act's restrictions in its mandate to the District Court.

Congress may impose this restriction; it violates no constitutional provision; it is not contrary to the doctrine of separation of powers; and it is not an improper encroachment into the business of the Courts below. The restriction is permitted by the Constitution upon the powers of the Courts below. Congress is permitted considerable judgment as to remedial relief allowed the Courts below. Under Article III of the Constitution, "... the judicial power of the United States ... is ... dependent for its distribution and organization, *and for the modes of its exercise*, entirely upon the action of Congress, who possess the sole power of creating

the tribunals (inferior to the Supreme Court), for the exercise of the judicial power, and of investing them with jurisdiction either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good." *Cary v. Curtis*, 3 How. 236, 245 (emphasis ours), and reaffirmed in *Palmore v. United States*, 411 U.S. 389, 401. Under Article III, Congress may limit the power of courts to issue injunctions in labor cases. *Lauf v. Shinner*, 303 U.S. 323. "No question can be raised of Congress' freedom, consistently with Article 3, to impose such a limitation upon the remedial powers of a federal court." *Glidden v. Zdanok*, 370 U.S. 530, 577, per Harlan J., in speaking of the Court of Claims' power only to award damages, not specific relief. Congress can deprive the courts of power to grant a particular remedy such as authority to enjoin enforcement of the Emergency Price Control Act. *Lockerty v. Phillips*, 319 U.S. 182. It is not a denial of a constitutional right for Congress to deny interlocutory relief pending judicial determination of the validity of a regulation and Congress can constitutionally make that choice in favor of the protection of the public interest from the danger of wartime inflation. *Yakus v. United States*, 321 U.S. 414, 439.

Here Congress has made the choice in favor of the protection of the public interest in an educationally sound and administratively efficient public school system by requiring implementation of school desegregation plans at the beginning of, rather than during, an academic school year. The opinion of the Court of Appeals should be reviewed to determine whether Congress' restriction upon the remedial

powers of the courts contained in the Act is permitted by the Constitution and whether Courts of Appeals and District Courts are obligated to observe Congressional limitations upon the remedial powers of Federal Courts in ordering remedies to eliminate the vestiges of state-imposed dual school systems.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Warren Whitham
210 Adolphus Tower,
Dallas, Texas 75202

Mark Martin,
One Main Place,
Dallas, Texas 75250

Attorneys for Petitioners

Dated: August 18, 1975

PROOF OF SERVICE

We, Warren Whitham and Mark Martin, Attorneys for Petitioners herein, and members of the Bar of the Supreme Court of the United States, hereby certify that on the ____ day of August, 1975, we served three copies of the foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit upon the following Counsel for Respondents:

Mr. Edward B. Cloutman, III
8204 Elmbrook Drive, Suite 200
Dallas, Texas 75247

Ms. Vilma S. Martinez
Mr. Sanford Jay Rosen
Mr. Alan B. Exelrod
Mexican American Legal
Defense and Educational Fund
145 Ninth St., 2nd Floor
San Francisco, California 94103

Ms. Sylvia M. Demarest
Dallas Legal Services
Foundation, Inc.
912 Commerce Street,
Room 202
Dallas, Texas 75202

Mr. Marvin Leventhal
Anderson and Banks
358-1/2 North Farish St.
Jackson, Miss. 39202

and upon the following Counsel for the various intervenors:

Mr. W. Ted Minick
4230 L.B.J. Freeway
Dallas, Texas 75234

Mr. William C. Dowdy, Jr.
505 North Industrial Blvd.
Dallas, Texas 75207

Mr. James G. Vetter, Jr.
Suite 920, 555 Griffin Square
Dallas, Texas 75202

Mr. Edwin L. Davis
1321 Collum Building
109 North Akard St.
Dallas, Texas 75202

Mr. N. Alex Bickley
City Attorney
Municipal Building
Dallas, Texas 75201

by mailing same to such Counsel at their respective addresses and depositing the same in a United States mail box in an envelope properly addressed to such addresses with first class air mail postage prepaid.

We further certify that all parties required to be served have been served.

_____

Warren Whitham

_____

Mark Martin

Attorneys for Petitioners

APPENDICES

APPENDIX "A"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

EDDIE MITCHELL TASBY, ET AL

versus CA 3-4211-C

DR. NOLAN ESTES, ET AL

MEMORANDUM OPINION

July 16, 1971

It is difficult to believe in this day and time that anyone anywhere would be surprised, shocked or amazed at this case or at the pendency of this law suit. It would be difficult for me to believe that anyone anywhere would be surprised, shocked or amazed by what I am about to rule in this case at this time.

On May 17, 1954, the Supreme Court of the United States, in *Brown vs. Board of Education*, said, "In the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore we hold that the plaintiffs and others similarly situated . . . are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the 14th Amendment." In 1955 the Supreme Court handed down its opinion in Brown #2 ordering desegregation of schools with "deliberate speed".

In the 16 years since Brown #2 little progress had been made and the Courts were confronted with actions by School Boards that used every device imaginable to evade and avoid their responsibilities in this regard.

In 1968 the Supreme Court, in *Green vs. County School Board*, pointed out this lack of progress and required that "The burden on a school board today is to come forward with a plan that promises realistically to work . . . *now* . . . until it is clear that state imposed segregation has been completely removed. *Green vs. County School Board*, 391 U.S. 430.

Despite this plain language in 1969 there was before the Court fresh evidence of the dilatory tactics of many school authorities and the Court, in *Alexander vs. Holmes County Board of Education*, 396 U.S. 19, held that the remedy must be implemented *forthwith*.

On April 20, 1971, Chief Justice Berger of the Supreme Court delivered for a unanimous court his landmark opinion in *Swan vs. Charlotte-Mecklenberg Board of Education* which said, among other things, the objective today remains to eliminate from the public schools all vestiges of state imposed segregation.

When it appears as it clearly does from the evidence in this case that in the Dallas Independent School District 70 schools are 90% or more white (Anglo), 40 schools are 90% or more black, and 49 schools with 90% or more minority, 91% of black students in 90% or more of the minority schools, 3% of the black students attend schools in which the majority is white or

Anglo, it would be less than honest for me to say or to hold that all vestiges of a dual system have been eliminated in the Dallas Independent School District, and I find and hold that elements of a dual system still remain.

The School Board has asserted that some of the all black schools have come about as a result of changes in the neighborhood patterns but this fails to account for many others that remain as segregated schools. The defendant School Board has also defended on the ground that it is following a 1965 Court order. This position is untenable.

The *Green* and *Alexander* cases have been handed down by the Supreme Court since the 1965 order of the Court of Appeals for the Fifth Circuit to the Dallas Independent School District. There have been too many changes in the law even in the Fifth Circuit and it is fairly obvious to me that the defendant School Board and its administration have been as aware of them as I. For example, the case of *Singleton vs. Jackson Municipal Separate School District* was handed down in December of 1969. This was the case in which the Court ordered, among other things, desegregation of faculty and other staff, majority to minority transfer policy, transportation, an order with reference to school construction and site selection, the appointment of bi-racial committees. The Dallas School Board has failed to implement any of these tools or to even suggest that it would consider such plans until long after the filing of this suit and in part after the commencement of this trial.

There is another question which this Court must decide and that has to do with the complaint of those plaintiffs who brought this suit as Mexican-Americans in behalf of themselves and all others similarly situated.

It is my opinion and I so hold that Mexican-Americans constitute a clearly separate and clearly identifiable ethnic group. No one ever had any doubt about Lee Trevino's ethnic origin and this is true of many many others. But as was said by Judge Jack Roberts of the Federal Court in Austin, "But the mere existence of an ethnic group, regardless of its racial origin, and standing alone, does not establish a case integrating it with the remainder of the school population. Rather, the plaintiff must show that there has been some form of de jure segregation against the ethnic minority." And I find that the plaintiff Mexican-Americans have failed in maintaining the burden of proof. I would point out, however, that this particular ruling may not be too significant in the light of what I propose to do in this regard and that is that any plan or remedy must take the Mexican-American into consideration and there will be the appointment of a tri-ethnic committee as distinguished from a bi-racial advisory committee. In this connection, I would advise that I will appoint Rev. Zan Holmes, Rene Martinez, and Attorney David Kendall on this committee, if they are willing to serve.

I have heretofore indicated during this trial that I would call upon the Board of the Dallas Independent School District for its plan to eliminate segregation in its school district and that I would expect that done now. Judge Woodrow Seals in Corpus Christi was con-

fronted by a board that stood like a balky steer in the road and refused to do anything and he pointed out that he was deprived of the expertise of the Board of Education and its administrative personnel in the fashioning of a plan and order of the Court that would eliminate the dual system. Judge Jack Roberts in Austin has called upon the parties, both plaintiffs and defendants, to file with the Court an adequate and sufficient plan. Judge Leo Brewster in Fort Worth has done the same thing. Defendant Dallas Independent School District has throughout this trial asserted its good faith and its willingness to cooperate with the Court and has also stated that it is opposed to segregation. Therefore, I direct that the Dallas Independent School District Board file with this Court its plan for the establishment of a unitary school system by 10:00 A.M. next Friday, July 23, 1971. It is obvious to me that the Board has been considering these matters for some time and that it has done some soul searching in this regard, as it should do.

Now all of this is not as grim as it sounds. I am opposed to and do not believe in massive cross-town bussing of students for the sole purpose of mixing bodies. I doubt that there is a Federal Judge anywhere that would advocate that type of integration as distinguished from desegregation. There are many many other tools at the command of the School Board and I would direct its attention to part of one of the plans suggested by TEDTAC which proposed the use of television in the elementary grades and the transfer of classes on occasion by bus during school hours in order to enable the different ethnic groups to communicate. How better could lines of communication be established than by saying, "I saw you on TV yester-

day," and, besides that, television is much cheaper than bussing and a lot faster and safer. This is in no sense a Court order but is merely something that the Board might consider.

At this point I want to make a few remarks about TEDTAC. That agency has been harassed, intimidated, pressured and abused in many other ways, and it did not deserve this type of treatment. The politicians have made their speeches, have called their office demanding names, suggesting loss of employment sometimes subtly and sometimes not so subtly. Some of the staff of TEDTAC have been obliged to unlist their phone numbers in order to escape harassing telephone calls. I have considered the entry of an order in this case that such harassment, intimidation and threats will be considered an obstruction of justice and therefore in contempt of this Court. It was TEDTAC which first suggested the "confluence of cultures" concept as was testified to by Dr. Estes. TEDTAC has worked in many of these matters and sincerely desires to be of assistance to the School Boards that are confronted with these problems. I would also suggest that the School Board could well hear from the plaintiffs' representatives as well as the ones who heretofore have been named as members of the tri-ethnic committee of this Court if they are willing to serve.

I would suggest that the Dallas Board of Education could make the "confluence of cultures" an actuality rather than a catch-phrase or a dream and that it could be of vast help to the City of Dallas in deserving its

Chamber of Commerce appellation of "City of Excellence."

(Signed) W. M. Taylor, Jr.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

EDDIE MITCHELL TASBY and PHILIP WAYNE TASBY, by their parent and next friend, SAM TASBY; EVELYN DENISE LAFAYETTE and DARLINE LAFAYETTE by their parent and next friend, LUDIE ANN COBBIN; JOHN L. MORGAN, LEON M. MORGAN, EMANUEL MORGAN and JACQUELINE MORGAN, by their parent and next friend, THELMA LEE CROUCH; JACQUELINE DENISE YARBOROUGH, KATHERINE YVETTE YARBOROUGH and WILLIE JACKSON by their parent and next friend, BETTYE JACKSON; NETTIE MARIE CATES by her parent and next friend BOBBIE LEAN COBBIN; TONY JEFFERSON, BEULAH JEFFERSON, ARTHUR JEFFERSON, YOLANDA JEFFERSON and JACQUELINE RUTH JEFFERSON, by their parent and next friend, RUTH JEFFERSON; ORA CLARA WOODS and JAMES EDWARD WOODS by their parent and next friend, HELEN WOODS; ANGELA MEDRANO and YOLANDA MEDRANO by their parent and next

friend, RICHARD MEDRANO; individually and on behalf of all others similarly situated

versus CA 3-4-211-C

DR. NOLAN ESTES, GENERAL SUPERINTENDENT OF DALLAS INDEPENDENT SCHOOL DISTRICT; THE BOARD OF TRUSTEES FOR THE DALLAS INDEPENDENT SCHOOL DISTRICT: MARVIN H. BERKELEY, EMMETT J. CONRAD, JOHN PLATH GREEN, MRS. HENRI L. BROMBERG, JR., J. R. HOLLINSWORTH, SAM R. FARIS, DANIEL FOSTER, TRINIDAD GARZA, individually and in their official capacities

JUDGMENT

On July 6, 1971, after hearing evidence and arguments of counsel, this Court filed and entered a Memorandum Opinion and Order finding and determining:

1. That in the Dallas Independent School District (DISD) all vestiges of a dual school system have not been eliminated and that elements of a dual system still remain;

2. That Mexican-Americans constitute a clearly separate and clearly identifiable ethnic group, but that the Plaintiff Mexican-American class had failed to maintain its burden of proof to show de jure segregation against it as an ethnic minority; however, the Court directed that any desegregation plan or remedy should and would take the Mexican-Americans into account;

3. That a Tri-Ethnic Committee as distinguished from a bi-racial committee would be established and the Court immediately named three individuals to that committee, namely, Rev. Zan Holmes, Black; Attorney David M. Kendall, Jr., Anglo; and Rene Martinez, Mexican-American, each of whom accepted the heavy responsibility imposed upon them and they have rendered extremely valuable assistance to the Court;

4. That Defendant DISD Board file with this Court at 10:00 A.M. Friday, July 23, 1971, its plan for the establishment of a unitary school system and suggested to the Board that the Court was opposed to massive cross-town bussing of students for the sole purpose of mixing bodies and also directed the Board's attention to a part of one of the plans suggested by Texas Educational Desegregation Technical Assistance Center (TEDTAC) proposing the use of television in the elementary grades and transfer of classes by bus during school hours in order to enable the different ethnic groups to communicate personally with each other and further suggesting that the Board could well confer with Plaintiffs' representatives and the named members of the Tri-Ethnic Committee. Reference is made to that Order and it is incorporated herein for all necessary purposes.

On July 23, 1971, at 10:00 A.M., the Defendant Board duly filed its desegregation plan (DX #20), consisting of 120 pages and entitling it "Confluence of Cultures" and showing a white hand, a black hand, and a brown hand clasped together in understanding, brotherhood and respect. Plaintiffs adopted and advocated, with minor modifications, the TEDTAC plan which had been filed in this Court on July 1, 1971. See "Summary

of Plaintiffs' Proposal to Desegregate the Dallas Independent School District", filed July 23, 1971 (PX #126). TEDTAC officials James P. Williams and Joe L. Price, both of whom testified in open court, stated unequivocally and positively that TEDTAC did not advocate nor endorse the so-called TEDTAC plan but had filed it simply to provide the court with information as to possible mechanics that could be used in a desegregation order.

Thereupon, the Court called for a private meeting of Plaintiffs' and Defendants' attorneys and representatives, as well as attorneys for intervenors and the Tri-Ethnic Committee members, to undertake the formation of a joint plan that would be in keeping with the respective contentions and positions of all parties concerned. Such meetings commenced on Friday and continued through Saturday, Sunday, and Monday, July 23 through 26, inclusive, to no avail, and hearing in open court was resumed at 10:00 A.M., Tuesday, July 27, and the Court heard the evidence and arguments of counsel of all parties, including intervenors.

The Court, fully confident of its constitutionality and that it will provide equal quality education for public school students of all races, creeds, and colors, now makes and enters this Order. The School Board of the Dallas Independent School District is ORDERED and DIRECTED:

1. **Desegregation of Faculty and Staff.**

A. No later than the opening of school, 1971, to assign the principals, teachers, teacher-aides, and other

staff (including all non-professional and para-professionals) who work directly with children so that the ratio of Negro, Mexican-American, and White teachers in each school, and the ratio of other staff in each, are substantially the same as each such ratio is to the teachers and other staff, respectively, in the entire system, with no more than 10% variance, above and below, in each school.

The DISD is directed, to the extent necessary to carry out this Order, to direct members of its staff, as a condition for employment, to accept new assignments.

B. Staff members who work directly with children, and professional staff who work on the administrative level, will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color, or national origin.

C. If there is to be a reduction in the number of principals, teachers, teacher-aides, or other staff employed by the DISD which will result in a dismissal or demotion of any such staff members, the staff member to be dismissed or demoted must be selected on the basis of objective and reasonable nondiscriminatory standards from among all the staff of the school district. In addition, if there is any such dismissal or demotion, no staff vacancy may be filled through recruitment of a person of a race, color, or national origin different from that of the individual dismissed or demoted, until each displaced staff member who is qualified has had an opportunity to fill the vacancy and has failed to accept an offer to do so.

"Demotion", as used above, includes any reassignment (1) under which the staff member receives less pay or has less responsibility than under the assignment he held previously, (2) which requires a lesser degree of skill than did the assignment he held previously, or (3) under which the staff member is asked to teach a subject or grade other than the one for which he is certified or for which he has had substantial experience within a reasonably current period. In general, and depending on the subject matter involved, five years is such a reasonable period.

D. To affirmatively recruit Mexican-American teachers and other professional staff at all levels. The DISD is specifically directed to seek a Mexican-American Assistant Superintendent and a Mexican-American Assistant to the Director of Personnel and Recruitment Services.

Nothing in this Order shall affect the ratio of Mexican-American teachers and staff in programs such as the Bi-lingual Education Program or the Metropolitan High School or similar programs. Likewise, because of the particular needs of bi-lingual students, additional percentages of Mexican-American faculty should be made available to all schools, at any level, which have a Mexican-American percentage significantly in excess of the total school district's ratio.

E. To develop non-racial objective criteria to be used in selecting the staff member who is to be hired, dismissed, paid, demoted, dismissed, or reassigned. These standards shall be submitted to the tri-ethnic committee for approval.

F. To implement and maintain the Desegregation Teacher Education Centers as provided in Appendix I of the DISD plan.

G. To increase the amount of time available to Staff development from two periods each month to a weekly period and to provide substantially more paid time for in service for the specific purpose of assisting the faculty and staff in their efforts towards implementing this Order. This program shall be subject to annual review and revision with the approval of the tri-ethnic committee.

H. To implement and establish the Human Relations Learning Centers as provided on page 28 of the DISD plan.

In addition, the DISD is directed to establish and maintain upon the advice of the tri-ethnic committee such Student Awareness Programs as that committee may deem advisable from time to time.

I. To continue to expand its present Confluence of Cultures Staff Development Program to assist teachers and administrators in developing greater cultural awareness and greater skills in individualization of instruction, and five of the ten days allocated for Staff Development for the 71-72 school year are to be designated for an expanding program of greater cultural awareness.

2. **Majority to Minority Transfer**

To implement the following transfer policy:

A. Any student attending a school in which his

race is in the majority shall be permitted to transfer to *any* school in the district in which his race is in the minority.

B. Transferring students are to be given priority for space in the school to which he will be transferred.

C. Transportation shall be provided by the School District for any transferring student who desires it.

D. If the School District grants transfers to students living in the district for their attendance at public schools outside the district, or if it permits transfers into the district of students who live outside the district, it shall do so on a nondiscriminatory basis, except that it shall not consent to transfers where the cumulative effect will reduce desegregation in either district or reenforce the dual school system.

E. Students who are physically handicapped, mentally retarded, highly gifted, those who seek career education courses, and other special-course students, shall be permitted to attend those schools offering appropriate facilities and courses; PROVIDED that all such transfers will be on a nondiscriminatory basis.

F. In the event the residence of a scholastic is moved from one zone to another zone during the course of a semester, such scholastic may apply for transfer to the school serving the zone of his new residence. Such transfer may be allowed on a finding that such transfer will increase the incidence of integration of the school to which transfer is sought. Guidelines to control such transfers, and administrative procedures to consider same, shall be established.

G. Any high school student electing to transfer to a school in which he is a member of a minority ethnic group, with the consent of his parents, shall be privileged to receive a schedule of studies in such a manner (to be reasonably determined by the Dallas Independent School District) that his attendance at school on Friday of each week shall not be required.

Transferring students shall not be required to attend school for a longer semester or a longer academic year than the non-transferring student nor shall his graduation be delayed by reason of his working on a four-day school schedule. The transferring student may, however, be required to attend school for a longer period of time on any or all of his four school days, if DISD so directs.

H. DISD is affirmatively directed to afford the transferring student both transportation and a four-day school week as incentive and compensation for the student who voluntarily accepts part of the Dallas Independent School District's burden to desegregate all schools and establish one unitary system. Transportation for majority to minority transfers shall be provided on the following basis:

(1) Where a sufficient number of students from a given community, zone, or point of origin will be travelling to a single destination, transportation will be provided by DISD;

(2) Where the number of students moving to a given designated school is smaller than a bus load, transportation will be provided in the form of special bus tokens or bus cards dis-

tributed directly to the pupil involved on a weekly basis to be used on the regular Dallas Transit System routes.

I. The Tri-Ethnic Committee is directed to work closely with the DISD on any program which will promote greater numbers of students to seek a transfer by virtue of these incentives and, further, to develop assistance for such students in determining the use of their Friday exemption from school such as: (1) gainful employment, (2) work with parents, (3) work with DISD as paid tutorial aides in compensatory programs, or any other activity of a unique urban area that may be moving toward the four-day work week.

J. The following special efforts should be immediately implemented by DISD toward the end that greater numbers of student transfers may be affected through this provision:

(1) The DISD should seek wide publicity relative to this transfer provision and the incentives provided to transferring students in local newspapers, television, and radio media;

(2) Bulletins explaining the student transfer provisions and incentives should be conspicuously displayed at all schools;

(3) At each high school teachers should be assigned the task of being available to explain the advantages of the student transfer provisions to all interested students;

(4) A central information center should be established with a publicized telephone number established to impart transfer details to anyone inquiring.

(5) Each student may readily apply for the new transfer at the school he last attended on a semester basis; such application should be made on or before two days prior to the beginning of a new semester and the DISD shall immediately provide space for the transferring student.

3. Confluence of Cultures Quality Education

To implement by the commencement of the 1971 school year and continue with the Confluence of Cultures Quality Education Program described in Appendix A, pp. 53-76, of the Board's plan filed with the Court on July 23, 1971, with particular attention to the Bi-lingual Education Program for Mexican-Americans, and the Board is further directed to allow Mexican-Americans to transfer to the centers where this program is offered when it does not exist at their school and shall provide for their transportation, if desired.

4. Compensatory Education

To institute and maintain the Compensatory Education Program described on page 29 of the Board's July 23, 1971 Plan, and the Board is further directed to maintain the remedial programs without maintaining segregated classrooms or tracking systems. Any

proposed discontinuance of these remedial programs must first be reviewed with the Tri-Ethnic Committee before any action is taken.

5. **Guaranteed Grade Level Performance**

To initiate and implement the Guaranteed Grade Level Performance for all economically deprived students described on page 26 and Appendix H, p. 114, of the Board's July 23, 1971 Plan (DX #20), PROVIDED that this provision of guaranteed grade level performance for minority students shall not prohibit such assistance being made available to economically and educationally disadvantaged White students, if the DISD should deem such extended assistance advisable.

Independent evaluation services from outside the DISD and with no connection with the contractors (if any) who may be selected to provide educational assistance shall be selected by the Tri-Ethnic Committee. Evaluation services shall be used to establish District reading norms and to determine on an annual basis if these guarantees are being effectively implemented by DISD and/or its contractural agents.

6. **School Construction and Site Selection**

To consult with and get the approval of the Tri-Ethnic Committee before beginning construction on any school facility or selecting future school sites. Further, all school construction and site selection, including the location of any temporary classrooms in the system shall be done in a manner that will prevent

the recurrence of a dual school structure, once this plan is implemented.

7. Transportation

To work with representatives of the Dallas Transit Authority, the Transportation Department of the Dallas County School Board, and the Director of Transportation of the District in reviewing bus and vehicle routes and the transportation of all eligible pupils on a non-segregated and otherwise non-discriminatory basis.

8. Extracurricular activities

To insure that all extracurricular activities continue to be conducted on a desegregated basis.

Where schools have been paired into one attendance zone, thus presenting a dual set of extracurricular associations, student clubs, honor societies, and other non-class activities, the DISD shall preserve both groups intact along with all student officers already elected for the academic year 1971-72 until February 1, 1972. On or before February 1, 1972, the DISD will provide the necessary time and means to the total paired student body for the purposes of merging all such activities so that each school campus will have only those student clubs or other non-classroom activities as are applicable to the grade level assigned to that campus.

Where necessary to preserve the integrity and continuity of an on-going extra curricular program, including all athletic programs, the DISD is authorized

to select and exempt certain student assignments (not to exceed 100 students per semester) from this Order. Such exemptions shall be made on the basis of the student's ability and his contribution to such non-classroom programs.

9. The Tri-Ethnic Committee

A. It is hereby Ordered that a Tri-Ethnic Committee will be formed, the chairmanship of which will rotate annually between a Mexican-American, a Black, and an Anglo. The Rev. Zan W. Holmes, Jr. is appointed as the Committee's first Chairman.

B. Among other things, the Committee will review the operation of the transportation system, teacher assignments, the majority to minority transfer rule, and the selection of school sites. The Committee is authorized to hold hearings and make recommendations to the School Board in connection with any of these activities.

C. The Committee will make reports to this Court on a monthly basis, or at such time less than monthly as the Committee deems advisable. These reports will advise the Court as to the maintenance of a unitary school system by the DISD and such other matters as the Committee may determine to be proper, providing DISD and Plaintiffs with a copy of such report.

D. Adequate office space will be made available in the Federal Building at 1100 Commerce for purposes of meetings and the maintenance of an office staff. The Board is directed to provide sufficient funds to employ two secretaries, one of whom will be a bilingual

Mexican-American, telephones, and appropriate office equipment and supplies. In this connection, it is contemplated by the Court that funds will be available out of the Emergency School Assistance Program (ESAP), for which the Board is expected to apply.

E. In addition to Rev. Zan Holmes, Mr. Davis M. Kendall, and Mr. Rene Martinez, the following are appointed to the Committee:

1. Mr. D. Marcus Ranger,
   4510 S. Oakland, Dallas, Tex. (Black)
2. Mrs. Kathlyn Gilliam,
   2507 Third Ave., Dallas, Tex. (Black)
3. Mr. J. B. Jackson, 4351 Jamaica,
   Dallas, Texas (Black)
4. Dr. C. F. Toles of Bishop College (Black)
5. Mrs. Mary Greene, of KERA's
   Sesame Street program (White)
6. Mr. John E. Stitt,
   10040 Meadowbrook, Dallas, Tex. (White)
7. Mr. Donald Jarvis,
   3338 S. Ravinia, Dallas, Tex. (White)
8. Mr. Richard Stroman,
   1201 S. Buckner, Dallas, Tex. (White)
9. Mr. Frank P. Hernandez,
   Southwest Building, Dallas, Tex.
   (Mexican-American)
10. Mr. Luis Estrada,
    4014 Odessa, Dallas, Texas
    (Mexican-American)
11. Mr. Frank Diaz,
    14417 Sunrose Lane, Dallas, Texas
    (Mexican-American)
12. Mr. Trinidad Garza,
    2235 W. Colorado Blvd., Dallas, Texas
    (Mexican-American)

STUDENT ASSIGNMENT PLAN

10. Senior High Schools

A. Pursuant to the Board's Plan, J. N. Ervin High School, Madison High School, and Crozier Tech will be closed as High School facilities, PROVIDED, however, that Black students and Mexican-American students now assigned to Crozier Tech will be admitted and provided transportation to Skyline Career Center.

B. Pair Kimball, South Oak Cliff and Carter High Schools in the following manner:

(1) Retain 1970-71 zone lines in those high schools;

(2) Assign one-half of the 10th Grade in South Oak Cliff to Kimball which shall retain its regular 10th Grade;

(3) Assign one-half of the 10th Grade in South Oak Cliff to Carter which shall retain its regular 10th Grade;

(4) Assign all 11th Grade students to South Oak Cliff;

(5) All 12th Grade students will attend and graduate from the High School serving the zone in which they reside;

(6) With respect to extracurricular activities, including athletic programs, atten-

tion is directed to the terms and provisions of Paragraph 8 of this Order.

(7) Transportation as requested by students may be provided in the form of special bus tokens or bus cards, distributed directly to the pupil involved on a weekly basis, to be used on regular Dallas Transit System routes.

C. Pursuant to the Board's plan of satelliting and zoning ethnic groups into High Schools, student assignments are made in accordance with Appendix A attached hereto and made a part hereof.

With respect to satellite zones listed and enumerated on Appendix A, transportation will be provided by the Board.

11. **Junior High Schools**

A. Pursuant to the Board's Plan, Peare C. Anderson will be closed as a Junior High School facility and will become an elementary school.

B. Pair Atwell, Browne, Hulcy, Storey and Zumwalt as follows:

(1) Assign all 9th grade students to Atwell;

(2) Assign one-half of the 7th grade students in Atwell, and all 7th grade students in Storey to Browne, which shall also retain its regular 7th grade;

(3) Assign one-half of the 7th grade students in Atwell and all the 7th grade students in Zumwalt to Hulcy, which shall also retain its 7th grade;

(4) Assign one-half of the 8th grade students in Atwell and all the 8th grade students from Browne to Storey, which shall also retain its 8th grade;

(5) Assign one-half of the 8th grade students in Atwell and all the 8th grade students from Hulcy to Zumwalt, which shall also retain its 8th grade;

Upon the opening of the new Hulcy facility, the School Board may consider exchanging the grade levels in Hulcy and Atwell only.

C. Pair Stockard, Edison, and Sequoyah as follows:

(1) Assign all 7th grade students to Stockard, all 8th grade students to Edison, and all 9th grade students to Sequoyah.

D. Pursuant to the Board's Plan of satelliting and zoning of ethnic groups into Junior High Schools, student assignments are made in accordance with Appendix B attached hereto and made a part hereof.)

With respect to satellite zones listed and enumerated on Appendix B, transportation will be provided by the Board.

12. **ELEMENTARY TELEVISION PLAN**

A. To establish a clustering of present elementary attendance zones in such a manner as to group those

elementary schools together that would provide an approximate 2:1 ratio of Anglo *classrooms* to minority *classrooms*.

B. To assign those elementary students residing in the elementary zones for the 1970-71 school year to the same neighborhood elementary school which served that zone in 1970-71 (except for those elementary schools which upon recommendation of the School Board are closed by this order). Schools which are to be closed are:

Vickery
Stephen J. Hay
Letot

and the students in Vickery are assigned to Hodgkiss, in Stephen J. Hay to Sam Houston, and in Letot to Burnett.

C. To establish elementary class schedules and courses of study so as to provide each elementary student with a daily minimum of one hour of contact with students of another race. Such contact shall be a simultaneous two-way oral and visual communication via television cable between two or more schools; classrooms of each such elementary school shall be identifiably paired in such a manner so that approximately two Anglo classrooms are paired with one minority classroom for the entire academic year. It is contemplated that from two to seven studio classrooms will be established at each elementary school.

Such studio rooms shall be equipped so as to provide the teacher and students seated therein the

ability to see and hear the students and teachers in the other paired classrooms who will also be seated in studio rooms at their schools.

The electronic cable necessary to effectuate this order shall be leased or installed between the elementary schools along with such other equipment (including channel modulators) as shall be deemed most engineeringly feasible to provide the simultaneous two-way oral and visual contact required above.

D. To provide at least one weekly visit of an educational nature and during regular school hours between the two or more paired classrooms that daily communicate with each other. Such visit shall provide not less than three hours of personal contact between the paired classrooms. Transportation for purposes of implementing this portion of the elementary assignment plan shall be provided forthwith by leasing available vehicles from public or private transit companies.

DD. Attached hereto is Appendix C which suggests a possible series of Clusters which provide an approximate 2 to 1 ratio of Anglo classrooms to minority classrooms, but nothing in this Order is intended to prevent the Board from establishing Clusters which may be more technically acceptable and more economically feasible so long as the stated ratio of approximately 2 to 1 is maintained.

E. To create a new administrative position of Cluster Director. This person shall be the chief administrator of all faculties, programs, and schools electronically clustered together for the purpose of es-

tablishing identifiably paired classrooms by television. Such person shall report to the Assistant Superintendent — Elementary Operations. The building principals shall report to the Cluster Director.

F. To provide for an appropriate training program designed to enable Cluster Director to implement this plan.

G. To instruct each Cluster Director to appoint a representative committee of teachers within the Cluster to serve as a Faculty Advisory Committee on matters of curriculum, extra-curricular programs, acquisition of teaching materials, classrooms methods, desegregated television contact work, and interschool visits. Each elementary school will be presented on such a committee which will be multiethnic in its makeup.

H. To instruct each Cluster Director to appoint, from parents within the Cluster, a multi-ethnic committee to serve the Cluster in an advisory capacity only. Each committee will be so constituted as to give equal representation to each elementary school and each ethnic group in proportion to that ethnic group's representation in the total enrollment of the Cluster as of October in any current academic year.

The advisory committee serving a Cluster will be required to meet a minimum of one time each month and make monthly reports of its recommendations to the Assistant Superintendent — Elementary Operations and the Cluster Director.

No parent will be permitted to serve more than two years on such a committee.

I. To encourage the continuance of all P.T.A. or other parent organizations currently serving individual elementary campuses. However, the formation of one cluster organization of this type to serve all the parents and all the schools of an entire Cluster is strongly recommended.

J. To direct that within a Cluster there should be equality of program and teaching materials. The programs as compared between Clusters might vary when viewed across the district as a whole. Parity between schools within a Cluster is an integral basis of this plan.

K. To implement The Elementary Television Plan in the following time period:

(a) The period of August 1, 1971 - February 1, 1972 shall be set aside for planning the full establishment of the elementary desegregation plan and installation of all equipment.

(b) On or before February 1, 1972, this program shall commence and shall achieve a maximum operational level by May 1, 1972, subject to the impossibility of acquisition of materials.

L. In line with the suggestion of Mr. Franklin Spafford, attorney for the Board, the following committee is appointed to provide the professional leadership needed to insure that the Elementary Television Plan

adopted herein effectively functions as a tool of desegregation:

Dr. Edwin Tapscott, of Houston, Texas
Dr. Donald A. Cowan, President, University of Dallas
Mr. A. Earl Cullum, Jr., Engineer
Mr. James T. Maxwell, Intervenor
Mr. Rod Surratt, Attorney, with Mr. Surratt as Chairman.

13. **Reporting Provision**

A. The School District shall, on November 1, 1971, and on April 15, 1972, and annually thereafter on April 15 of each succeeding year, until further order of this Court, file with the Clerk of this Court a report setting forth the following:

(1)

(a) The number of students by race enrolled in the School District;

(b) The number of students by race enrolled in each school of the District;

(c) The number of students by race enrolled in each classroom in each of the schools in the District.

(2)

(a) The number of full time teachers by race in the District;

(b) The number of full time teachers by race in each school in the District;

(c) The number of part-time teachers by race in the District;

(d) The number of part-time teachers by race in each school in the District.

(3)

The number of interdistrict transfers granted during the current school semester, or since the last report to the Court, the race of the students who were granted such transfers, and the School District to which the transfers were allowed.

(4)

Whether the transportation system, if any, in the District is desegregated to the extent that Negro and White students are transported daily on the same buses.

(5)

Whether all facilities, such as gymnasiums, auditoriums, and cafeterias are being operated on a desegregated basis.

(6)

A brief description of any present or proposed construction or expansion of facilities; including

(a) the exact location and nature of the proposed site acquisition, new construction, or expansion;

(b) the grade levels to be served by the proposed structure, and the anticipated number and race of the students to be assigned;

(c) the action taken by the Board pursuant to the submitted proposal and the anticipated dates for: (i) preliminary architectural plans, (ii) final plan, (iii) construction bids advertised and accepted, (iv) site preparation, and (v) construction undertaken.

(7)

(a) Whether the school board has sold or abandoned any school facility, equipment, or supplies having a total value of more than $500.00 since this Court's Order entered this day.

(b) Whether the school board has sold, abandoned, or otherwise transferred any real property of this school district since this Court's Order entered this day.

(c) Whether the school board has closed or discontinued use of any school property, building, or facility since this Court's Order entered this day.

14. **Retention of Jurisdiction**

To the end that a unitary school system shall be maintained in the Dallas Independent School District, the United States District Court for the Northern District of Texas retains jurisdiction of this case.

SO ORDERED this 2nd day of August, 1971.

(Signed) W. M. Taylor, Jr.
UNITED STATES DISTRICT JUDGE

SENIOR HIGH SCHOOL

Ethnic Composition

SCHOOL	BLACK	%	MEXICAN AMERICAN	%	ANGLO	%	TOTAL ENROLLMENT
Adams	742	26.6	22	.6	2488	76.1	3252
Adamson	200	15.4	125	9.8	975	75.0	1300
Carter	527	35.6	49	3.4	912	61.4	1488
Hillcrest	630	23.2	15	0	2085	76.8	2730
Jefferson	766	28.3	112	3.3	1938	68.2	2816
Kimball	528	21.2	59	2.9	1382	76.4	1969
Lincoln	1436	69.9	136	6.1	498	24.1	2070
N. Dallas	160	19.6	350	43.2	300	37.3	810
Pinkston	380	43.7	311	35.2	191	21.6	882
Roosevelt	1100	83.2	43	3.3	180	13.8	1323
Samuell	390	17.7	42	1.2	1858	81.3	2290
Seagoville	190	16.1	49	4.4	881	78.7	1120
Skyline	270	10.0	460	13.3	1919	73.7	2699
So. Oak Cliff	1298	51.2	31	1.6	1169	46.2	2498
Spruce	500	24.6	61	2.2	1496	72.2	2057
Sunset	420	23.1	150	8.4	1250	68.1	1820
White	791	26.1	20	.2	2180	72.3	2991
Wilson	317	18.8	101	5.1	1299	75.1	1717

BRYAN ADAMS (School Elementary Zone) — (1) Reilly, (2) Hexter, (3) Casa View, (4) Gill, (5) Kiest, (6) Reinhardt, (7) Truett Zone north of Gross Road, (8) Connor Zone northwest of Ferguson Road, (9) Sanger Zone northeast of Saint Francis, (10) Hassell (Satellite), (11) Brown (Satellite), (12) Wheatley (Satellite).

ADAMSON (School Elementary Zone) — (1) Hogg, (2) Reagan, (3) Peeler, (4) Henderson, (5) Budd.

CARTER (School Elementary Zone) — (1) Weiss, (2) Umphrey Lee, (3) Twain, south of Loop 12, (4) Terry, (5) Alexander, (6) Turner.

HILLCREST (School Elementary Zone) — (1) Dealey, (2) Pershing, (3) Kramer, (4) Preston Hollow, (5) Vickery, (6) Hotchkiss, (7) Rogers, (8) Ray (Satellite), (9) Frazier (Satellite).

JEFFERSON (School Elementary Zone) — (1) Field south of Royal Lane, (2) Caillet, (3) Burnet, (4) Letot, (5) Foster, (6) Walnut Hill, (7) Williams, (8) Polk, (9) Longfellow, (10) Carr (Satellite)

KIMBALL (School Elementary Zone) — (1) Cochran, (2) Donald south of Clarendon, (3) Stemmons, (4) Hall, (5) Henderson south of Illinois, (6) Davis, (7) Webster, (8) Carpenter, (9) Twain north of Loop 12.

LINCOLN (School Elementary Zone) — (1) Thompson, (2) Rice, (3) Colonial, (4) City Park, (5) Austin, (6) Crockett, (7) Anderson (Satellite).

NORTH DALLAS (School Elementary Zone) — (1) Knight, (2) Maple Lawn, (3) Travis, (4) Hay, (5) Washington, (6) Milam.

PINKSTON (School Elementary Zone) — (1) Arcadia Park, (2) Allen, (3) Earhart, (4) Carver south of Singleton.

ROOSEVELT (School Elementary Zone) — (1) Miller, (2) Johnson, (3) Mills, (4) Harllee, (5) Bowie.

SAMUELS (School Elementary Zone — (1) Titche zone south of Military Parkway, (2) Blanton zone south of Military Parkway, (3) San Jacinto zone south of Scyene Road, (4) Silberstein zone south of Scyene Road, (5) Rhoads zone northwest of Second Avenue and White Rock Creek, (6) J.Q. Adams zone north of Lake June, (7) Hawthorne zone, (8) Runyon Zone north of Lake June, (9) Ireland zone north of Lake June, (10) Dunbar (Satellite).

SKYLINE (School Elementary Zone — (1) Truett zone south of Gross Road, (2) Connor zone southeast of Ferguson Road, (3) Sanger zone southwest of Saint Francis, (4) Bayles, (5) Rowe, (6) Silberstein north of Scyene Road, (7) Urban Park, (8) San Jacinto zone north of Scyene Road, (9) Blanton zone north of Military Parkway, (10) Titche zone north of Military Parkway.

SOUTH OAK CLIFF (School Elementary Zone — (1) Pease, (2) Bushman, (3) Bryan, (4) Darrell - Stone, (5) Budd south of Illinois, (6) Russell, (7) Oliver, (8) Marsalis, (9) Lisbon, (10) Thornton, (11) Ervin.

SPRUCE (School Elementary Zone) — (1) Rhoades north and west of Second Avenue and White Rock Creek, (2) Burleson, (3) Ireland south of Lake June, (4) J.Q. Adams south of Lake June, (5) Macon, (6) Runyon south of Lake June, (7) Lagow, (8) Dorsey, (9) Blair, (10) Moseley.

SUNSET (School Elementary Zone) — (1) Douglass, (2) Jaurez, (3) Lanier, (4) Rosemont, (5) Winnetka, (6) Hooe, (7) Peabody, (8) Cowart, (9) Jones.

WHITE (School Elementary Zone) — (1) Arlington Park (Satellite), (2) Tyler (Satellite), (3) Carver (Satellite), (4) Field north of Royal Lane, (5) Marcus, (6) Degolyer, (7) Cabell, (8) Withers, (9) Nathan Adams, (10) Gooch.

WILSON (School Elementary Zone) — (1) Harris, (2) Roberts, (3) Mt. Auburn, (4) Lipscomb, (5) Lakewood, (6) Lee, (7) Jackson.

Appendix B

JUNIOR HIGH SCHOOL
Ethnic Composition

SCHOOL	BLACK	%	MEXICAN AMERICAN	%	ANGLO	%	TOTAL ENROLLMENT
Atwell	1108	47.6	15	.15	1221	52.2	2344
Browne	666	49.5	23	1.9	659	48.1	1348
Cary	250	13.5	127	6.1	1507	79.2	1884
Comstock	500	28.4	104	5.9	1156	65.7	1760
Edison	707	46.2	347	22.9	480	31.8	1534
Florence	400	21.1	42	2.2	1458	76.7	1900
Franklin	220	14.0	7	.5	1343	85.5	1570
Gaston	180	12.6	37	2.6	1213	84.8	1430
Greiner	4	.3	180	13.6	1143	86.1	1327
Hill	190	11.8	23	1.4	1402	86.8	1615
Holmes	2514	84.2	159	5.2	298	10.9	2971
Hood	480	21.5	57	2.6	1693	75.9	2230
Hulcy	644	52.1	63	5.2	510	42.7	1217
Long	130	9.4	124	9.0	1126	81.6	1380
Marsh	250	13.4	19	1.0	1600	85.6	1869
Rusk	15	2.2	367	54.1	297	43.7	679
Rylie*	25	3.2	25	3.2	725	93.6	775
Sequoyah	626	43.2	341	23.2	459	33.6	1426
Spence	180	24.2	350	47.0	214	28.8	744
Stockard	706	47.8	261	17.9	519	34.3	1486
Storey	621	42.2	190	12.2	664	45.3	1475
Walker*	220	20.6	0	0	850	79.4	1070
Zumwalt	593	51.9	17	1.6	536	46.9	1146

*Information not available

ATWELL (School Elementary Zone) — (1) Marsalis, (2) Twain, (3) Turner, (4) Terry North of Camp Wisdom Road.

BROWNE (School Elementary Zone) — (1) Stemmons, (2) Webster, (3) Davis, (4) Carpenter, (5) Henderson South of Illinois.

CARY (School Elementary Zone) — (1) Field South of Royal Lane, (2) Caillet, (3) Burnet, (4) Letot, (5) Foster, (6) Walnut Hill, (7) Williams, (8) Polk, (9) Longfellow.

COMSTOCK (School Elementary Zone) — (1) Rhoades West of White Rock Creek & Second Avenue, (2) Burleson, (3) Blair, (4) Ireland South of Lake June, (5) J.Q. Adams South of Lake June, (6) Macon South of Elam, (7) Dorsey.

EDISON (School Elementary Zone) — (1) Allen North of Fort Worth Turnpike, (2) Earhart, (3) Carr, (4) Juarez, (5) Douglass, (6) Lanier.

FLORENCE (School Elementary Zone) — (1) Titche, (2) Runyon, (3) J.Q. Adams North of Lake June, (4) Macon North of Elam, (5) Anderson, (6) Dunbar.

FRANKLIN (School Elementary Zone) — (1) Dealey, (2) Kramer, (3) Pershing, (4) Preston Hollow, (5) Hotchkiss, (6) Vickery, (7) Rogers, (8) Ray.

GASTON (School Elementary Zone) — (1) Reinhardt, (2) Sanger North of St. Francis, (3) Kiest, (4) Truett, (5) Connor, (6) Hassell (Satellite).

GREINER (School Elementary Zone) — (1) Hogg, (2) Rosemont, (3) Reagan, (4) Henderson North of Illinois, (5) Winnetka, (6) Hooe, (7) Stevens Park.

HILL (School Elementary Zone) — (1) Hexter, (2) Reilly, (3) Casa View, (4) Gill, (5) Harris (Satellite).

HOLMES (School Elementary Zone) — (1) Bushman North of Fordham, (2) Bryan East of Crest, (3) Miller, (4) Mills, (5) Harlee, (6) Johnston, (7) Bowie, (8) Peeler.

HOOD (School Elementary Zone) — (1) Rowe, (2) Silberstein, (3) Frazier, (4) Rhoades East of Second Avenue & White Rock Creek, (5) Urban Park, (6) Blanton, (7) San Jacinto, (8) Hawthorne, (9) Ireland North of Lake June.

HULCY (School Elementary Zone) — (1) U. Lee, (2) Terry South of Camp Wisdom Road, (3) Weiss, (4) Alexander.

LONG (School Elementary Zone) — (1) Jackson, (2) Lee, (3) Lakewood, (4) Lipscomb, (5) Mt. Auburn, (6) Roberts, (7) Bayles, (8) Sanger South of St. Francis.

MARSH (School Elementary Zone) — (1) Field North of Royal Lane, (2) Marcus, (3) Cabell, (4) DeGolyer, (5) Gooch, (6) Withers, (7) N. Adams, (8) Arlington Park (Satellite), (9) Tyler (Satellite), (10) Part of Carver (Satellite).

RUSK (School Elementary Zone) — (1) Knight, (2) Maple Lawn, (3) Houston, (4) Hay.

SEQUOYAH (School Elementary Zone) — (1) Carver.

SPENCE (School Elementary Zone) — (1) Travis, (2) Washington, (3) Milam, (4) Bonham, (5) Fannin, (6) Crockett, (7) Austin.

STOCKARD (School Elementary Zone) — (1) Hart, (2) Cowart, (3) Peabody, (4) Donald, (5) Jones, (6) Arcadia Park, (7) Cochran, (8) Allen South of Fort Worth Turnpike.

STOREY (School Elementary Zone) — (1) Budd, (2) Russell, (3) Oliver, (4) Lisbon, (5) Bryan West of Crest.

ZUMWALT (School Elementary Zone) — (1) Pease, (2) Darrell, (3) Bushman South of Fordham, (4) Ervin, (5) Thornton.

Appendix C

I.C.C.U.* is the equivalent of a "Cluster" referred to in DISD'S Desegregation Plan (DX #20).

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* Integrated Classroom Communication Unit.

I.C.C.U. CLASSROOM PAIRINGS FOR QUALITY INTEGRATED EDUCATION

Junior High School Zone WILLIAM HAWLEY ATWELL FEEDER SCHOOLS

Anglo	Black	Mexican/American
Turner	Lisbon	
Terry	Marsalis	
Alexander		
Twain		

ETHNIC BREAKDOWN BY CLASSROOM

Classrooms	Anglo	Black	M/A
FIRST GRADE	16	9	
SECOND GRADE	17	9	
THIRD GRADE	16	9	
FOURTH GRADE	17	10	
FIFTH GRADE	17	9	
SIXTH GRADE	17	8	

Junior High Zone
WILLIAM HAWLEY ATWELL

SCHOOL	1	2	3	4	5	6	7	A	B	C
Lisbon	5	6	5	6	5	5			X	
Marsalis	4	3	4	4	4	3			X	
Turner	4	5	5	5	5	5		X		
Terry	5	5	5	5	6	5		X		
Alexander	3	3	2	3	3	3		X		
Twain	4	4	4	4	3	4		X		

PAIRING: Terry, Alexander, Marsalis

SCHOOL	1	2	3	4	5	6	7	A	B	C
Terry	5	5	5	5	6	5		X		
Alexander	3	3	2	3	3	3		X		
Total:	8	8	7	8	9	8				
Marsalis	4	3	4	4	4	3			X	

PAIRING: Turner, Twain, Lisbon

SCHOOL	1	2	3	4	5	6	7	A	B	C
Turner	4	5	5	5	5	5		X		
Twain	4	4	4	4	3	4		X		
Total:	8	9	9	9	8	9				
	5	6	5	6	5	5			X	

I.C.C.U. CLASSROOM PAIRINGS
FOR
QUALITY INTEGRATED EDUCATION
Junior High School Zone
T. W. BROWNE
FEEDER SCHOOLS

Anglo	Black	Mexican/American
Carpenter	Oliver	
Webster	Marshall	
Stemmons		
Twain (¼)		

ETHNIC BREAKDOWN BY CLASSROOM

Classrooms	Anglo	Black	M/A
FIRST GRADE	13	8	
SECOND GRADE	13	9	
THIRD GRADE	14	10	
FOURTH GRADE	14	11	
FIFTH GRADE	16	10	
SIXTH GRADE	15	9	

Junior High Zone
T. W. BROWNE

SCHOOL	1	2	3	4	5	6	7	A	B	C
Oliver			2	11	10	9			X	
Carpenter	3	3	3	4	4	4		X		
Webster	4	4	5	4	6	5		X		
Stemmons	5	5	5	5	5	5		X		
Twain (¼)	1	1	1	1	1	1		X		
Marshall	8	9	8						X	

PAIRING:

SCHOOL	1	2	3	4	5	6	7	A	B	C
Marshall			2	11	10	9				
Oliver	8	9	8							
Carpenter	3	3	3	4	4	4				
Webster	4	4	5	4	6	5				
Stemmons	5	5	5	5	5					
	12	12	13	13	15	14				

I.C.C.U. CLASSROOM PAIRINGS
FOR
QUALITY INTEGRATED EDUCATION
Junior High School Zone
EDWARD H. CARY
FEEDER SCHOOLS

Anglo	Black	Mexican/American
Walnut Hill	Knight	Maple Lawn (½)
Foster	Carr	
Maple Lawn (½)		

ETHNIC BREAKDOWN BY CLASSROOM

Classrooms	Anglo	Black	M/A
FIRST GRADE	9	8	1
SECOND GRADE	9	7	1
THIRD GRADE	9	8	1
FOURTH GRADE	9	8	1
FIFTH GRADE	9	7	1
SIXTH GRADE	9		1

Junior High Zone
EDWARD H. CARY

SCHOOL	1	2	3	4	5	6	7	A	B	C
Walnut Hill	3	3	3	3	4	4		X		
Foster	5	5	5	5	4	4		X		
Maple Lawn (½)	2	2	2	2	2	2		½		½
Knight	10	10	10	10	10	10			X	
Carr	8	7	8	8	7					

I.C.C.U. CLASSROOM PAIRINGS
FOR
QUALITY INTEGRATED EDUCATION

Junior High School Zone
E. B. COMSTOCK
FEEDER SCHOOLS

Anglo	Black	Mexican/American
Burleson	Bushman	
J. Q. Adams	Miller (½)	

ETHNIC BREAKDOWN BY CLASSROOM

Classrooms	Anglo	Black	M/A
FIRST GRADE	10	11	
SECOND GRADE	13	13	
THIRD GRADE	12	13	

Classrooms	Anglo	Black	M/A
FOURTH GRADE	11	11	
FIFTH GRADE	10	11	
SIXTH GRADE	10	11	

Junior High Zone
E. B. COMSTOCK

SCHOOL	1	2	3	4	5	6	7	A	B	C
Bushman	7	9	9	8	7	7			X	
½ Miller	3	4	3	3	3	3			X	
Burleson	7	8	7	7	7	7		X		
J. Q. Adams	4	5	6	4	4	4		X		

PAIRING: Bushman, Burleson

SCHOOL	1	2	3	4	5	6	7	A	B	C
Bushman	7	9	9	8	7	7			X	
Burleson	7	8	7	7	7	7		X		

PAIRING: ½ Miller, J. Q. Adams

SCHOOL	1	2	3	4	5	6	7	A	B	C
½ Miller	3	4	3	3	3	3			X	
J. Q. Adams	4	5	6	4	4	4		X		

I.C.C.U. CLASSROOM PAIRINGS
FOR
QUALITY INTEGRATED EDUCATION

Junior High School Zone
THOMAS A. EDISON
FEEDER SCHOOLS

Anglo	Black	Mexican/American
Arcadia Park	Lanier (1/3)	Jones (¼)
Jones (3/4)	Douglas (1/3)	Stevens Park (¼)
Stevens Park (3/4)	Juarez (1/3)	Allen
	Earhart	Lanier (2/3)
		Douglas (2/3)
		Juarez (2/3)

ETHNIC BREAKDOWN BY CLASSROOM

Classrooms	Anglo	Black	M/A
FIRST GRADE	10	5	11
SECOND GRADE	8	6	13
THIRD GRADE	7	5	14
FOURTH GRADE	7	4	13
FIFTH GRADE	7	4	13
SIXTH GRADE	7	1	3

Junior High Zone
THOMAS A. EDISON

SCHOOL	1	2	3	4	5	6	7	A	B	C
Arcadia Park	3	3	3	3	3	3		X		
Jones	5	4	3	3	3	3		3/4		1/4
Stevens Park	4	3	3	3	3	3	3	3/4		1/4
	12	10	9	9	9	9				
Allen	5	6	7	6	6					X
Lanier	2	3	4	4	4	2			1/3	2/3
Douglas	2	3	3	3	2				1/3	2/3
Juarez	3	2							1/3	2/3
	12	14	14	13	12	2				
Earhart	3	3	3	2	2				X	

I.C.C.U. CLASSROOM PAIRINGS
FOR
QUALITY INTEGRATED EDUCATION

Junior High School Zone
FRED F. FLORENCE
FEEDER SCHOOLS

Anglo	Black	Mexican/American
Ireland	Thompson	
Hawthorne		
Blanton		
Titche		
Runyon		

ETHNIC BREAKDOWN BY CLASSROOM

Classrooms	Anglo	Black	M/A
FIRST GRADE	17	5	
SECOND GRADE	18	6	
THIRD GRADE	20	8	
FOURTH GRADE	20	7	
FIFTH GRADE	21	6	
SIXTH GRADE	21	6	

Junior High Zone
FRED F. FLORENCE

SCHOOL	1	2	3	4	5	6	7	A	B	C
Thompson	5	6	8	7	6	6	6		X	
Ireland	4	4	4	4	5	5				
Hawthorne	3	2	3	2	3	3				
Blanton	4	5	5	6	6	6				
Titche	3	3	4	4	3	3				
Runyon	3	4	4	4	4	4				
	17	18	20	20	21	21				

SCHOOL
Ireland
Titche
Runyon

I.C.C.U. CLASSROOM PAIRINGS
FOR
QUALITY INTEGRATED EDUCATION

Junior High School Zone
BENJAMIN FRANKLIN
FEEDER SCHOOLS

Anglo	Black	Mexican/American
Milam (½)	Ray	Milam (½)
Rogers	Colonial	
Preston Hollow		
Vickery		
Hotchkiss		

ETHNIC BREAKDOWN BY CLASSROOM

Classrooms	Anglo	Black	M/A
FIRST GRADE	11	8	1
SECOND GRADE	12	10	1
THIRD GRADE	11	10	1
FOURTH GRADE	12	8	1
FIFTH GRADE	11	9	1
SIXTH GRADE	12	8	1

Junior High Zone
BENJAMIN FRANKLIN

SCHOOL	1	2	3	4	5	6	7	A	B	C
Ray	3	4	4	3	4	4			X	
Colonial	5	6	6	5	5	4			X	
	8	10	10	8	9	8				
Milam	2	2	2	2	2	2		½		½
Rogers	4	4	4	4	3	4	3	X		
Preston Hollow	2	3	3	3	3	3	4	X		
Vickery	2	2	1	2	2	2	2	X		
Hotchkiss	2	2	2	2	2	2	2	X		
	10	11	10	11	10	11				

I.C.C.U. CLASSROOM PAIRINGS
FOR
QUALITY INTEGRATED EDUCATION

Junior High School Zone
W. H. GASTON
FEEDER SCHOOLS

Anglo	Black	Mexican/American
Bayles	Rhoades	
Sanger (3/4)		
Kiest		
Rheinhardt		
Gill		
Silberstein (part)		

ETHNIC BREAKDOWN BY CLASSROOM

Classrooms	Anglo	Black	M/A
FIRST GRADE	23	8	
SECOND GRADE	24	8	
THIRD GRADE	25	8	
FOURTH GRADE	24	7	
FIFTH GRADE	25	7	
SIXTH GRADE	24	6	

Junior High Zone
W. H. GASTON

SCHOOL	1	2	3	4	5	6	7	A	B	C
Rhoades	8	8	8	7	7	7	6		X	
1/10 Frazier										
Bayles	4	4	4	4	4	4		X		
3/4 Sanger	3	3	3	3	3	3		X		
Kiest	6	6	6	6	6	6		X		
Rheinhardt	5	6	6	6	6	6		X		
Gill	4	4	5	4	5	4		X		
Part of Silberstein	1	1	1	1	1	1		X		

PAIRING:

SCHOOL	1	2	3	4	5	6	7	A	B	C
Rhoades	8	8	8	7	7	6			X	
Bayles	4	4	4	4	4	4		X		

PAIRING:

SCHOOL	1	2	3	4	5	6	7	A	B	C
1/10 Frazier	1	1	1	1	1	1			X	
Part of Silberstein	1	1	1	1	1	1		X		

I.C.C.U. CLASSROOM PAIRINGS FOR QUALITY INTEGRATED EDUCATION

Junior High School Zone
ROBERT T. HILL
FEEDER SCHOOLS

Anglo	Black	Mexican/American
Lipscomb	Dunbar	Mt. Auburn (½)
Casaview	Frazier	
Hexter		
Reilly		
Mt. Auburn (½)		

ETHNIC BREAKDOWN BY CLASSROOM

Classrooms	Anglo	Black	M/A
FIRST GRADE	25	11	2
SECOND GRADE	26	11	2
THIRD GRADE	27	12	2
FOURTH GRADE	25	13	2
FIFTH GRADE	23	12	2
SIXTH GRADE	22	12	2

Junior High Zone
ROBERT T. HILL

SCHOOL	1	2	3	4	5	6	7	A	B	C
Dunbar	5	5	6	6	5	5			X	
Frazier	6	6	6	7	7	5			X	
Lipscomb	6	6	6	6	6	5	5	X		
Casaview	6	6	6	5	5	5		X		
Hexter	3	3	4	4	3	3	4	X		
Reilly	8	9	9	8	7	7		X		
Mt. Auburn	4	4	4	4	4	4	4	½		½

PAIRING:

SCHOOL	1	2	3	4	5	6	7	A	B	C
Frazier	6	6	6	7	7	5			X	
Reilly	8	9	9	8	7	7		X		
Hexter	3	3	4	4	3	3	4	X		
	11	12	13	12	10	10				

PAIRING:

SCHOOL	1	2	3	4	5	6	7	A	B	C
Dunbare	5	5	6	6	5	5			X	
Lipscomb	6	6	6	6	6	5	5	X		
Casaview	6	6	6	5	5	5		X		
	12	12	12	11	11	10				
Mt. Auburn	4	4	4	4	4	4	4	½		½

I.C.C.U. CLASSROOM PAIRINGS FOR QUALITY INTEGRATED EDUCATION

Junior High School Zone
OLIVER WENDELL HOMES
FEEDER SCHOOLS

Anglo	Black	Mexican/American
Hooe	Miller (½)	
Peeler	Johnston	
Winnetka	Harlee	
Reagan		
Bowie		
Hogg		
Rosemont		

ETHNIC BREAKDOWN BY CLASSROOM

Classrooms	Anglo	Black	M/A
FIRST GRADE	20	13	
SECOND GRADE	20	13	
THIRD GRADE	19	14	
FOURTH GRADE	20	13	
FIFTH GRADE	20	13	
SIXTH GRADE	20	12	

Junior High Zone
OLIVER WENDELL HOLMES

SCHOOL	1	2	3	4	5	6	7	A	B	C
Miller (½)	3	3	3	3	3	3			X	
Johnston	6	6	6	6	6	6			X	
Harlee	4	4	5	4	4	3	2		X	
Hooe	3	3	3	3	3	3	4			
Peeler	2	3	3	3	3	3	3			
Winnetka	2	3	3	3	2	3	3			
Reagan	3	2	2	2	3	2	2			
Bowie	4	3	3	3	3	3	2			
Hogg	2	2	2	2	2	2	2			
Rosemont	4	4	3	4	4	4	4			

PAIRING:

SCHOOL	1	2	3	4	5	6	7	A	B	C
Johnson	6	6	6	6	6	6				
Bowie	4	3	3	3	3	3				
Rosemont	4	4	3	4	4	4				
	8	7	6	7	7	7				

PAIRING:

SCHOOL	1	2	3	4	5	6	7	A	B	C
Harlee	4	4	5	4	4	3	2			
Hogg	2	2	2	2	2	2	2			
Hooe	3	3	3	3	3	3	4			
Peeler	2	3	3	3	3	3	3			
	7	8	8	8	8	8				

PAIRING:

SCHOOL	1	2	3	4	5	6	7	A	B	C
Miller	3	3	3	3	3	3			X	
Winnetka	2	3	3	3	2	3	3	X		
Reagan	3	2	2	2	3	2	2	X		
	5	5	5	5	5	5	5			

I.C.C.U. CLASSROOM PAIRINGS FOR QUALITY INTEGRATED EDUCATION

Junior High School Zone
JOHN B. HOOD
FEEDER SCHOOLS

Anglo	Black	Mexican/American
Silberstein	Rice	
Rowe		
Conner		
Truett		
San Jacinto		
Urban Park		

ETHNIC BREAKDOWN BY CLASSROOM

Classrooms	Anglo	Black	M/A
FIRST GRADE	17	7	
SECOND GRADE	22	8	
THIRD GRADE	22	9	
FOURTH GRADE	21	8	
FIFTH GRADE	22	8	
SIXTH GRADE	23	7	

Junior High Zone
JOHN B. HOOD

SCHOOL	1	2	3	4	5	6	7	A	B	C
Rice	7	8	9	8	8	7			X	
Silberstein	3	3	3	3	3	3	3	X		
Rowe	2	3	3	3	3	4		X		
Conner	3	3	3	3	3	3	3	X		
Truett	5	6	6	5	6	6	7	X		
San Jacinto	3	4	4	4	4	4		X		
Urban Park	3	3	3	3	3	3		X		

I.C.C.U. CLASSROOM PAIRINGS
FOR
QUALITY INTEGRATED EDUCATION

Junior High School Zone
D. A. HULCY
FEEDER SCHOOLS

Anglo	Black	Mexican/American
U. Lee	Thornton	
Weiss		

ETHNIC BREAKDOWN BY CLASSROOM

Classrooms	Anglo	Black
FIRST GRADE	8	5
SECOND GRADE	9	6
THIRD GRADE	8	6
FOURTH GRADE	8	6
FIFTH GRADE	8	6
SIXTH GRADE	8	6

Junior High Zone
D. A. HULCY

SCHOOL	1	2	3	4	5	6	7	A	B	C
Thornton	5	6	6	6	6	6			X	
U. Lee	4	5	4	4	4	4		X		
Weiss	4	4	4	4	4	4		X		
	8	9	8	8	8	8				

I.C.C.U. CLASSROOM PAIRINGS
FOR
QUALITY INTEGRATED EDUCATION

Junior High School Zone
J. L. LONG
FEEDER SCHOOLS

Anglo	Black	Mexican/American
Roberts	Harris	
Lipscomb (2/3)	Hassell (½)	
Lee	Wheatley	
Lakewood		

ETHNIC BREAKDOWN BY CLASSROOM

Classrooms	Anglo	Black	M/A
FIRST GRADE	13	8	
SECOND GRADE	14	8	
THIRD GRADE	14	8	
FOURTH GRADE	13	8	
FIFTH GRADE	13	7	
SIXTH GRADE	12	8	

Junior High Zone
J. L. LONG

SCHOOL	1	2	3	4	5	6	7	A	B	C
Harris	2	3	3	3	3	3			X	
½ Hassell	3	2	2	2	2	2			X	
Wheatley	3	3	3	3	2	3			X	
Roberts	3	4	4	3	3	3		X		
2/3 Lipscomb	4	4	4	4	4	3		X		
Lee	3	3	3	3	3	3		X		
Lakewood	3	3	3	3	3	3		X		

PAIRING:

SCHOOL	1	2	3	4	5	6	7	A	B	C
Harris	2	3	3	3	3	3			X	
Lipscomb	4	4	4	4	4	3		X		

PAIRING:

SCHOOL	1	2	3	4	5	6	7	A	B	C
½ Hassell	3	2	2	2	2	2			X	
Lee	3	3	3	3	3	3		X		

PAIRING:

SCHOOL	1	2	3	4	5	6	7	A	B	C
Wheatly	3	3	3	3	2	3			X	
Lakewood	3	3	3	3	3	3		X		

I.C.C.U. CLASSROOM PAIRINGS
FOR
QUALITY INTEGRATED EDUCATION

Junior High School Zone
THOMAS C. MARSH
FEEDER SCHOOLS

Anglo	Black
Cabell	Earhart
DeGolyer	Arlington Park

Anglo	Black	Mexican/American
Marcus		
Dield		
Gooch		

ETHNIC BREAKDOWN BY CLASSROOM

Classrooms	Anglo	Black	M/A
FIRST GRADE	20	11	
SECOND GRADE	22	8	
THIRD GRADE	22	8	
FOURTH GRADE	23	7	
FIFTH GRADE	20	8	
SIXTH GRADE	20		

Junior High Zone
THOMAS C. MARSH

SCHOOL	1	2	3	4	5	6	7	A	B	C
Earhart	10	7	7	6	7				X	
Arlington Park	1	1	1	1	1				X	
	11	8	8	7	8					
Cabell	6	7	7	8	6	6		X		
DeGolyer	3	4	4	4	4	4		X		
Marcus	4	4	4	3	3	3		X		
Field	3	2	2	2	2	2		X		
Gooch	4	5	5	6	5	5		X		
	20	22	23	24	20	20				

I.C.C.U. CLASSROOM PAIRINGS
FOR
QUALITY INTEGRATED EDUCATION

Junior High School Zone
THOMAS J. RUSK
FEEDER SCHOOLS

Anglo	Black	Mexican/American
Longfellow (½)	Longfellow (½)	Maple Town (½)
Maple Town (½)	City Park (2/3)	Houston (2/3)
Houston (1/3)		Travis
		City Park (1/3)

ETHNIC BREAKDOWN BY CLASSROOM

Classrooms	Anglo	Black	M/A
FIRST GRADE	4	3	8
SECOND GRADE	4	3	8
THIRD GRADE	4	3	6
FOURTH GRADE	4	3	6
FIFTH GRADE	4	3	7
SIXTH GRADE	3	3	7

Junior High Zone

THOMAS J. RUSK

SCHOOL	1	2	3	4	5	6	7	A	B	C
Longfellow	2	2	2	2	2	2		½	½	
Maple Lawn	4	4	4	4	4	3		½		½
Houston	4	3	3	3	3	3		1/3		2/3
Travis	2	3	2	2	3	3				X
City Park	3	4	3	3	2	2			2/3	1/3

PAIRING:

SCHOOL	1	2	3	4	5	6	7	A	B	C
Longfellow	2	2	2	2	2	2		½	½	
Maple Lawn	4	4	4	4	4	3		½		½

PAIRING:

SCHOOL	1	2	3	4	5	6	7	A	B	C
City Park	3	4	3	3	2	2			2/3	1/3
Travis	2	3	2	2	3	3				X
Houston	4	3	3	3	3	3		1/3		2/3

I.C.C.U. CLASSROOM PAIRINGS
FOR
QUALITY INTEGRATED EDUCATION

Junior High School Zone
RYLIE
FEEDER SCHOOLS

Anglo	Black
Moseley	Ervin
Lagow	

ETHNIC BREAKDOWN BY CLASSROOM

Classrooms	Anglo	Black	M/A
FIRST GRADE	8	3	
SECOND GRADE	8	4	
THIRD GRADE	8	3	
FOURTH GRADE	8	3	
FIFTH GRADE	8	3	
SIXTH GRADE	8	3	

Junior High Zone
RYLIE

SCHOOL	1	2	3	4	5	6	7	A	B	C
Moseley	4	3	3	3	4	4		X		
Lagow	4	5	5	5	4	4		X		
	8	8	8	8	8	8				
Ervin	3	4	4	4	3	3	3		X	

I.C.C.U. CLASSROOM PAIRINGS
FOR
QUALITY INTEGRATED EDUCATION

Junior High School Zone
SEQUOYAH
FEEDER SCHOOLS

Anglo	Black	Mexican/American
Knight	Carver	
Letot	Arlington Park	
Burnet		
Caillet		

ETHNIC BREAKDOWN BY CLASSROOM

Classrooms	Anglo	Black	M/A
FIRST GRADE	17	7	
SECOND GRADE	18	7	
THIRD GRADE	17	7	
FOURTH GRADE	17	7	
FIFTH GRADE	16	7	
SIXTH GRADE	16	7	

Junior High Zone
SEQUOYAH

SCHOOL	1	2	3	4	5	6	7	A	B	C
Carver	6	6	6	6	6	6			X	
Arlington Park	1	1	1	1	1	1			X	
	7	7	7	7	7	7				
Knight	4	4	4	4	3	4		X		
Letot	2	2	2	2	2	2		X		
Burnet	6	6	5	5	5	4		X		
Caillet	5	6	6	6	6	6		X		
	17	18	17	17	16	16				

I.C.C.U. CLASSROOM PAIRINGS
FOR
QUALITY INTEGRATED EDUCATION

Junior High School Zone
ALEX W. SPENCE
FEEDER SCHOOLS

Anglo	Black	Mexican/American
Crockett(½)	Brown	Crockett(½)
Fannin(½)	Hassell	Fannin(½)
Bonham(½)		Bonham(½)
Jackson		

ETHNIC BREAKDOWN BY CLASSROOM

Classrooms	Anglo	Black	M/A
FIRST GRADE	10	10	8
SECOND GRADE	8	10	6
THIRD GRADE	8	9	6
FOURTH GRADE	8	9	6
FIFTH GRADE	8	7	6
SIXTH GRADE	7	7	5

Junior High Zone
ALEX W. SPENCE

SCHOOL	1	2	3	4	5	6	7	A	B	C
Brown	5	6	5	5	4	4	3		X	
Hassell	5	4	4	4	3	3			X	
	10	10	9	9	7	7				
Crockett	6	4	4	4	4	3	3	1/2		1/2
Fannin	6	5	4	4	4	4		1/2		1/2
Bonham	3	3	3	3	3	3		1/2		1/2
Jackson	2	2	2	2	2	2	1	X		

PAIRING:

SCHOOL	1	2	3	4	5	6	7	A	B	C
Hassell	5	4	4	4	3	3			X	
Fannin	6	5	4	4	4	4		1/2		1/2
Jackson	2	2	2	2	2	2	1	X		
	8	7	6	6	6	6				

PAIRING:

SCHOOL	1	2	3	4	5	6	7	A	B	C
Brown	5	6	5	5	4	4	3		X	
Crockett	6	4	4	4	4	3	3	1/2		1/2
Bonham	3	3	3	3	3	3		1/2	1/2	
	9	7	7	7	7	6				

BLEED THROU

I.C.C.U. CLASSROOM PAIRINGS FOR QUALITY INTEGRATED EDUCATION

Junior High School Zone
L. V. STOCKARD
FEEDER SCHOOLS

Anglo	Black	Mexican/American
Henderson	Mills	Cowart (1/4)
Cowart (3/4)	Budd	Peabody (1/4)
Peabody (3/4)		

ETHNIC BREAKDOWN BY CLASSROOM

Classrooms	Anglo	Black	M/A
FIRST GRADE	11	13	2
SECOND GRADE	11	14	2
THIRD GRADE	11	13	2
FOURTH GRADE	10	14	2
FIFTH GRADE	10	14	2
SIXTH GRADE	10	14	2

Junior High Zone
L. V. STOCKARD

SCHOOL	1	2	3	4	5	6	7	A	B	C
Mills	5	7	7	8	8	8				
Budd	8	7	6	6	6	6				
	13	14	13	14	14	14				
Henderson	4	4	4	4	4	4				
Cowart	4	4	4	3	4	3				
Peabody	3	3	2	3	2	3				
	11	11	10	10	10	10				

I.C.C.U. CLASSROOM PAIRINGS FOR QUALITY INTEGRATED EDUCATION

Junior High School Zone
BOUDE STOREY FEEDER SCHOOLS

Anglo	Black	Mexican/American
Davis	Bryan	
Hall	Russell	
Donald		
Cochran		

ETHNIC BREAKDOWN BY CLASSROOM

Classrooms	Anglo	Black	M/A
FIRST GRADE	15	13	
SECOND GRADE	15	14	
THIRD GRADE	15	16	
FOURTH GRADE	16	14	
FIFTH GRADE	14	14	
SIXTH GRADE	14	14	

Junior High Zone
BOUDE STOREY

SCHOOL	1	2	3	4	5	6	7	A	B	C
Bryan	6	8	9	8	8	7			X	
Russell	7	6	7	6	6	6			X	
	13	14	16	14	14	13				
Davis	4	4	4	5	4	4				
Hall	5	5	5	5	5	4				
Donald	4	4	4	4	3	4				
Cochran	2	2	2	2	2	2				
	15	15	15	16	14	14				

BLEED THROU

I.C.C.U. CLASSROOM PAIRINGS FOR QUALITY INTEGRATED EDUCATION

Junior High School Zone
EWELL D. WALKER
FEEDER SCHOOLS

Anglo	Black	Mexican/American
Longfellow (2/3)	Longfellow (1/3)	Williams (1/8)
Williams (½)	Williams (3/8)	Hay (¼)
Pershing	Polk	
N. Adams	Washington	
Kramer		
Dealey		
Withers		
Hay (3/4)		

ETHNIC BREAKDOWN BY CLASSROOM

Classrooms	Anglo	Black	M/A
FIRST GRADE	20	7	1
SECOND GRADE	20	7	1
THIRD GRADE	23	6	1
FOURTH GRADE	22	10	1
FIFTH GRADE	23	11	1
SIXTH GRADE	24	7	1

Junior High Zone
EWELL D. WALKER

SCHOOL	1	2	3	4	5	6	7	A	B	C
Longfellow	4	4	4	4	4	3				
Williams	2	2	2	2	2	2				
Pershing	3	3	4	3	4	4				
N. Adams	3	3	4	4	4	4				
Kramer	3	3	3	3	3	4	4			

SCHOOL	1	2	3	4	5	6	7	A	B	C
Dealey	3	3	3	3	3	3	3			
Withers	4	4	5	5	5	6				
	22	22	25	24	25	26				

PAIRING:

SCHOOL	1	2	3	4	5	6	7	A	B	C
Polk	4	4	3	3	4	4				
Washington	2	2	2	6	6	6	6			
Hay	1	1	1	1	1	1	1			
	7	7	6	10	11	11				

I.C.C.U. CLASSROOM PAIRINGS FOR QUALITY INTEGRATED EDUCATION

Junior High School Zone
SARAH ZUMWALT
FEEDER SCHOOLS

Anglo	Black	Mexican/American
Blair	Stone (Darrell)	
Macon	Pease	
Dorsey		
Anderson		

ETHNIC BREAKDOWN BY CLASSROOM

Classrooms	Anglo	Black	M/A
FIRST GRADE	16	12	
SECOND GRADE	16	12	
THIRD GRADE	16	12	
FOURTH GRADE	17	15	
FIFTH GRADE	16	16	
SIXTH GRADE	14	14	

BLEED THROU

Junior High Zone
SARAH ZUMWALT

SCHOOL	1	2	3	4	5	6	7	A	B	C
Stone (Darrell)	5	5	5	9	9	9				
Pease	7	7	7	6	7	5				
	12	12	12	15	16	14				
Blair	5	5	5	5	5	4				
Macon	4	4	4	4	4	4				
Dorsey	3	3	3	4	3	2				
Anderson	4	4	4	4	4	4				
	16	16	16	17	16	14				

In The United States District Court
For The Northern District Of Texas
Dallas Division

SAM TASBY, ET AL,
Plaintiffs,
versus CA No. 3-4211-C

DR. NOLAN ESTES, ET AL,
Defendants.

SUPPLEMENTAL ORDER FOR
PARTIAL STAY OF JUDGMENT

August 9, 1971

The Court has continued to consider the Judgment entered on August 2, 1971, and for the reasons stated in Supplemental Opinion to be filed herein, on its own motion, has concluded that parts of said Order direct-

ing pairing/grouping and satelliting at the secondary level should be stayed in order for the Court to determine whether or not the other tools of desegregation provided for in the August 2 Order have effectively desegregated the Dallas School System before resorting to the movement and transportation of students.

IT IS ACCORDINGLY ORDERED that:

1. Paragraph 10-B of the August 2, 1971 Judgment, pertaining to pairing/grouping of Kimball, Carter and South Oak Cliff High Schools;

2. Paragraph 10-C providing for the satelliting of students from the following elementary school zones — Hassell, Browne, Wheatley, Ray, Frazier, Carr, Anderson, Dunbar, Arlington Park, Tyler and Carver — into high schools, as shown on Appendix A of the Judgment;

3. Paragraph 11-B of said Order pertaining to Junior High Schools and pairing Atwell, Browne, Hulcey, Storey and Zumwalt;

4. Paragraph 11-C also pertaining to Junior High Schools and pairing Stockard, Edison and Sequoyah; and

5. Paragraph 11-D pertaining to satelliting students from the following named elementary school zones — Hassell, Harris, Arlington Park, Tyler, and part of Carver into Junior High Schools, as shown on Appendix B of said Order, be and the same are hereby stayed until January 10, 1972, and students assigned in

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the satellite zones by the August 2nd Order are to be reassigned by the Board of Education to appropriate High and Junior High Schools, taking into consideration capacity and the establishment of a unitary school system.

In all other respects the August 2, 1971 Judgment of this Court shall remain in full force and effect.

SIGNED and ENTERED this 9th day of August, 1971.

/s/ W. M. TAYLOR
UNITED STATES
DISTRICT JUDGE

In The United States District Court
For The Northern District Of Texas
Dallas Division

EDDIE MITCHELL TASBY, ET AL
versus CA No. 3-4211-C

DR. NOLAN ESTES, GENERAL SUPERINTENDENT, DALLAS INDEPENDENT SCHOOL DISTRICT, ET AL.

REPORT ON JUNIOR AND SENIOR HIGH SCHOOL STUDENT ASSIGNMENTS

August 12, 1971

The Dallas Independent School District respectfully

reports that subject to the Court's approval, it proposes to assign students at the Junior and Senior High School levels pursuant to the Court's Supplemental Order for Partial Stay of Judgment, dated August 9, 1971, as set forth in the attached resolutions of its Board of Education adopted August 11, 1971 and requests the Court to authorize and approve such assignments.

Respectfully submitted,

/s/ FRANKLIN E. SPAFFORD
Franklin E. Spafford

/s/ WARREN WHITHAM
Warren Whitham
Attorneys for Defendants

SPAFFORD, GAY & WHITHAM
210 Adolphus Tower 748-9657
Dallas, Texas 75202

ORDER

The above report and attached Resolutions of the Board of Education of the Dallas Independent School District is approved. The Dallas Independent School District is ordered, authorized and directed to assign Junior and Senior High School students as therein provided.

DATED: August 12, 1971.

/s/ W. M. TAYLOR
UNITED STATES
DISTRICT JUDGE

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RESOLUTION

RESOLVED that pursuant and obedient to the Order of the United States District Court for the Northern District of Texas dated August 9, 1971, entered in the existing desegregation proceedings staying certain provisions and orders made by that Court in that action in its prior order of August 2, 1971, and further ordering and directing the Dallas Independent School District to reassign to appropriate junior and senior high schools students affected by such prior order of August 2, 1971, taking into consideration capacity and the establishment of a unitary school system, the Dallas Independent School District assigns junior high school and senior high school students in the Dallas Independent School District for the school year 1971-72 to the attendance zones for such secondary schools described, identified and set forth on Defendants' Exhibits 18 and 17 in evidence in such existing desegregation proceedings and as shown on the attached Appendices listing the respective feeder elementary schools and noting these elementary schools designated as satellites and indicating the dividing line of secondary attendance zones as to certain elementary schools with a street notation set out opposite or to the right of the named elementary school save and except as to the following elementary school zones:

(a) All high school students in the Arlington Park zone to North Dallas High School,

(b) All high school students in the George W. Carver zone to W. T. White High School,

(c) All junior high school students in the Arlington Park zone to Rusk Junior High School,

(d) All junior high school students in that part of the George W. Carver zones as follows:

Kingbridge Street and Holystone Street to Marsh Junior High School,

(e) All junior high school students in the Arlington Park zone to Rusk Junior High School.

(f) All junior high school students in that part of the George W. Carver zone as follows:

except those living on Kingbridge Street and Holystone Street to Sequoyah Junior High School;

the boundary lines for said elementary schools being as described, identified and set forth on Defendants' Exhibit 17 in evidence in such existing desegregation proceedings; provided, however, that any student who attended Crozier Tech in the school year 1970-71 shall be assigned to the particular high school as provided for students in Crozier Tech in the Court's Order of August 2, 1971, Paragraph 10A.

AND BE IT FURTHER RESOLVED that pursuant to existing Policy number 5119b that students who shall

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be in the ninth grade for the school year 1971-72 shall be permitted to attend and complete the ninth grade at the school they attended in the eighth grade and that students who shall be in the twelfth grade for the school year 1971-72 shall be permitted to attend and complete the twelfth grade and graduate from the school they attended in the eleventh grade; provided, however, that any such student identified in this Paragraph of this Resolution exercising such right shall not be entitled to transportation unless transportation was furnished to him for the last school year 1970-71 and his residence address remains unchanged; and provided further that the particular school attended by any student identified in this Paragraph of this Resolution exercising such right for the school year 1970-71 remains open and has a ninth or twelfth grade as permitted under any orders of the Court existing or hereafter made in such desegregation proceedings or under any regulations of the School District existing or hereafter made.

AND BE IT FURTHER RESOLVED that the above resolutions are adopted subject to the approval of the Court and; adopted and to be effective as of the commencement of the 1971-72 school year.

Signed) Nolan Estes
General Superintendent

STATE OF TEXAS
COUNTY OF DALLAS
DALLAS INDEPENDENT SCHOOL DISTRICT

I, H. D. Pearson, Secretary of the Board of Education of the Dallas Independent School District, Dallas

County, Texas, do hereby certify that the above and foregoing is a true and correct copy of an excerpt from the minutes of the Board of Education of the Dallas Independent School District, Dallas County, Texas, in special meeting August 11, 1971, all of which are spread upon Minute Book No. 52 of the Board of Education of the Dallas Independent School District, Dallas County, Texas.

WITNESS MY HAND and the seal of the Board of Education of the Dallas Independent School District, this the 12th day of August, A.D., 1971.

(Signed) H. D. Pearson
Secretary

STUDENT ASSIGNMENTS — HIGH SCHOOL
APPENDIX A

BRYAN ADAMS (Grades 10-12) — (1) Casa View, (2) Gill, Charles, (3) Hassell, T. C. (Satellite), (4) Harris, Fannie C. (Satellite), (5) Hexter, Victor H., (6) Kiest, Edwin J., (7) Reilly, Martha T., (8) Reinhardt, (9) Sanger, Alex (north of St. Francis St.), (10) Truett, George W. (north of Gross Rd.), (11) Conner, S.S. (north of Ferguson Rd.)

W. H. ADAMSON (Grades 10-12) — (1) Budd, Harrell, (2) Henderson, Margaret B., (3) Hogg, James S., (4) Peeler, John, (5) Reagan, John H.

DAVID W. CARTER (Grades 10-12) — (1) Alexander, Birdie, (2) Lee, Umphrey, (3) Marsalis, T. L., (4) Terry, T. G., (5) Thornton, Robert L., (6) Turner, Adelle, (7) Twain, Mark (south of Loop 12), (8) Weiss, Martin.

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HILLCREST (Grades 10-12) — (1) Dealey, George B., (2) Hotchkiss, L. L., (3) Kramer, Arthur, (4) Pershing, J. J., (5) Preston Hollow, (6) Ray, J. W. (Satellite), (7) Rogers, Dan.

L. G. PINKSTON (Grades 9-12) — (1) Allen, Gabe, (2) Arcadia Park, (3) Carr, C. F., (4) Earhart, Amelia, (5) Stevens Park (North of Ft. Worth Cut-Off), (6) Navarro, Jose A., (7) Carver, George Washington (grade 9 only except those living on Kingbridge St. and Holystone St.).

FRANKLIN D. ROOSEVELT (Grades 10-12) — (1) Bowie, James, (2) Harllee, N.W., (3) Johnston, Albert S., (4) Miller, William B., (5) Mills, Roger Q.

LINCOLN (Grades 9-12) — (1) Colonial, (2) Brown, John H., (3) Rice, Charles, (4) Thompson, H. S., (5) Wheatley, Phyllis, (6) Crockett, David, (7) *Austin, Stephen F., (8) *City Park, *Except for those students enrolled in Crozier Tech, 1970-71.

NORTH DALLAS (Grades 10-12) — (1) Bonham, James B., (2) Fannin, James W., (3) Houston, Sam, (4) Knight, Obadiah, (5) Maple Lawn, (6) Milam, Ben, (7) Travis, William B., (8) Arlington Park, (9) Washington, Booker T. (Except for thos Black and Brown students enrolled in Crozier Tech, 1970-71)

SKYLINE (Grades 10-12) — (1) Bayles, (2) Conner, S. S. (south of Ferguson Rd.), (3) Frazier, Julia, (4) Rowe, Edna, (5) Sanger, Alex (South of St. Francis), (6) Silberstein, Ascher, (7) Truett, George W. (South of Gross Road), (8) Urban Park, (9) Blanton, Annie Webb

(North of Military Parkway), (10) San Jacinto (North of Scyene Road), (11) *City Park, (12) *Booker T. Washington, (13) *Stephen F. Austin, *Black and Brown students enrolled in Crozier Tech., 1970-71.

SOUTH OAK CLIFF (Grades 10-12) — (1) Bryan, John N., (2) Bushman, W. W., (3) Darrell, B. F., (4) Lisbon, (5) Marshall, T. D., (6) Oliver, Clara, (7) Pease, Elisha M., (8) Seguin, Erasmo, (9) Stone, Harry, (10) Ervin, J. N., (11) Russell, Clinton P. (East of Marsalis).

H. GRADY SPRUCE (Grades 9-12) — (1) Adams, John Q. (South of Lake June Road), (2) Anderson, William M., (3) Blair, W. A., (4) Buckner, Robert C., (5) Burleson, Rufus C., (6) Dorsey, Julius, (7) Ireland, John (South of Lake June), (8) Lagow, Richard, (9) Macon, B. H., (10) Moseley, Nancy, (11) Rhoads, Joseph J. (South of Second Avenue — West of W. R. Creek), (12) Runyon, John W. (South of Lake June Road).

SUNSET (Grades 10-12) — (1) Cowart, Leila P., (2) Douglass, Fred, (3) Hooe, Lida, (4) Jones, Anson, (5) Juarez, Benito, (6) Lanier, Sidney, (7) Peabody, George, (8) Rosemont, (9) Stevens Park (South of Ft. Worth Cut-Off), (10) Winnetka.

W. W. SAMUELL (Grades 10-12) — (1) Adams, John Q. (North of Lake June Road), (2) Blanton, Annie Webb (South of Military Parkway), (3) Dunbar, Paul L. (Satellite), (4) Hawthorne, Nathaniel, (5) Ireland, John (North of Lake June Road), (6) Runyon, John (North of Lake June Road), (7) San Jacinto (South of Scyene Road), (8) Titche, Edward, (9) Rhoads, J. J. (North of Second Avenue — West of W. R. Creek).

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SEAGOVILLE (Grades 7-12) — (1) Central, (2) Kleberg, (3) Seagoville.

THOMAS JEFFERSON (Grades 10-12) — (1) Burnet, David G., (2) Caillet, F. P., (3) Field, Tom W. (South of Royal Lane), (4) Foster, Stephen C., (5) Longfellow, Henry W., (6) Polk, K. B., (7) Walnut Hill, (8) Williams, Sudie L.

JUSTIN F. KIMBALL (Grades 10-12) — (1) Carpenter, John, (2) Cochran, Nancy, (3) Davis, Jefferson, (4) Donald, L. O.,(5) Hall, Lenore Kirk, (6) Russell, Clinton P. (West of Marsalis Avenue), (7) Stemmons, Leslie L., (8) Webster, Daniel, (9) Twain, Mark (North of Loop 12).

W. T. WHITE (Grades 10-12) — (1) Adams, Nathan, (2) Cabell, William L., (3) DeGolyer, Everett L., (4) Gooch, Tom C., (5) Field, Tom (North of Royal Lane), (6) Marcus, Herbert, (7) Withers, Harry C., (8) Carver, George Washington (Satellite).

WOODROW WILSON (Grades 10-12) — (1) Jackson, Stonewall, (2) Lakewood, (3) Lee, Robert E., (4) Lipscomb, William, (5) Mount Auburn, (6) Roberts, O.M.

STUDENT ASSIGNMENTS
JUNIOR HIGH SCHOOL
APPENDIX B

WILLIAM HAWLEY ATWELL (Grades 7-9) — (1) Marsalis, T. L., (2) Terry, T. G. (North of Camp Wisdom Road), (3) Turner, Adelle, (4) Twain, Mark (South of Loop 12).

T. W. BROWNE (Grades 7-9) — (1) Carpenter, John W., (2) Davis, Jefferson, (3) Russell, Clinton P. (West of Marsalis Avenue), (4) Stemmons, Leslie, (5) Webster, Daniel, (6) Twain, Mark (North of Loop 12).

EDWARD H. CARY (Grades 7-9) — (1) Burnet, David G., (2) Caillet, F. P., (3) Field, Tom W. (South of Royal Lane), (4) Foster, Stephen C., (5) Longfellow, Henry W., (6) Polk, K. B., (7) Walnut Hill, (8) Williams, Sudie L.

E. B. COMSTOCK (Grades 7-9) — (1) Blair, W. A., (2) Buckner, Robert C., (3) Adams, John Q. (South of Lake June — West of Loop 12), (4) Burleson, Rufus C., (5) Dorsey, Julius, (6) Ireland, John (South of Lake June Road), (7) Rhoads, Joseph J. (West of W. R. Creek & Second Avenue), (8) Macon, B. H. (South of Elam Road).

THOMAS A. EDISON (Grades 6-7-8) — (1) Allen, Gabe P., (2) Carr, C. F., (3) Earhart, Amelia (West of Westmoreland), (4) Douglass, Fred, (5) Juarez, Benito, (6) Lanier, Sidney.

FRED F. FLORENCE (Grades 7-9) — (1) Adams, John Q. (North of Lake June — East of Loop 12), (2) Anderson, William M., (3) Macon, B. H. (North of Elam Road), (4) Blanton, Annie Webb (South of Bruton Road), (5) Dunbar, Paul L. (Satellite), (6) Runyon, John W., (7) Titche, Edward.

BENJAMIN FRANKLIN (Grades 8-9) — (1) Dealey, George B., (2) Hotchkiss, L. L., (3) Kramer, Arthur, (4) Pershing, John J., (5) Preston Hollow, (6) Ray, J. W. (Satellite), (7) Rogers, Dan D.

W. H. GASTON (Grades 8-9) — (1) Connor, S. S., (2) Hassell, Thomas C. (Satellite), (3) Kiest, Edwin J., (4) Sanger, Alex (North of St. Frances) (5) Reinhardt, (6) Truett, George W.

W. E. GREINER (Grades 7-9) — (1) Henderson, Margaret B., (2) Hogg, James S., (3) Hooe, Lida, (4) Peeler, John F., (5) Reagan, John H., (6) Rosemont, (7) Stevens Park, (8) Winnetka.

ROBERT T. HILL (Grades 7-9) — (1) Casa View, (2) Gill, Charles A., (3) Harris, Fannie C. (Satellite), (4) Hexter, Victor H., (5) Reilly, Martha T.

OLIVER WENDELL HOLMES (Grades 7-9) — (1) Bryan, John Neely (East of Lancaster Road — North of Fordham Road), (2) Bushman, W. W. (North of Fordham Road), (3) Harllee, N. W., (4) Johnston, Albert Sidney, (5) Miller, William Brown, (6) Mills, Roger Q.

JOHN B. HOOD (Grades 7-9) — (1) Blanton, Annie Webb (North of Bruton Road), (2) Frazier, Julia C., (3) Hawthorne, Nathaniel, (4) Ireland, John (North of Lake June Road), (5) Rowe, Edna, (6) San Jacinto, (7) Silberstein, Ascher, (8) Urban Park.

D. A. HULCY (Grades 7-9) — (1) Alexander, Birdie, (2) Lee, Umphrey, (3) Terry, T. G. (South of Camp Wisdom Road), (4) Thornton, Robert L., (5) Weiss, Martin.

J. L. LONG (Grades 8-9) — (1) Bayles, (2) Jackson, Stonewall, (3) Lakewood, (4) Lee, Robert E., (5) Lipscomb, William, (6) Mount Auburn, (7) Roberts, O. M., (8) Sanger, Alex (South of St. Francis).

THOMAS C. MARSH (Grades 7-9) — (1) Adams, Nathan, (2) Cabell, William H., (3) DeGolyer, Everett L., (4) Gooch, Tom C., (5) Marcus, Herbert, (6) Withers, Harry C., (7) Field, Tom W. (North of Royal Lane), (8) Carver, George Washington (Holystone & Kingbridge).

THOMAS J. RUSK (Grades 7-9) — (1) Houston, Sam., (2) Knight, Obadiah, (3) Maple Lawn, (4) Arlington Park.

RYLIE (Grades 7-8) — (1) Moseley, Nancy, (2) Lagow, Richard.

SEQUOYAH (Grades 6-7-8) — (1) Carver, George Washington (All except Holystone & Kingbridge), (2) Earhart, Amelia (East of Westmoreland), (3) Navarro, Jose A.

ALEX W. SPENCE (Grades 7-9) — (1) Bonham, James B., (2) Austin, Stephen F., (3) Crockett, David, (4) Fannin, James W., (5) Milam, Ben, (6) Travis, William B., (7) Washington, Booker T.

L. V. STOCKARD (Grades 7-9) — (1) Arcadia Park, (2) Cochran, Nancy, (3) Cowart, Leila P., (4) Donald, L. O., (5) Jones, Anson, (6) Hall, Leonore Kirk, (7) Peabody, George.

BOUDE STOREY (Grades 7-9) — (1) Bowie, James, (2) Budd, Harrell, (3) Bryan, John Neely (West of Lancaster Avenue), (4) Lisbon, (5) Oliver, Clara, (6) Russell, Clinton P. (East of Marsalis Avenue), (7) Seguin, Erasmo (East of Marsalis Avenue), (8) Marshall, T. D.

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E. D. WALKER (Grades 6-7) — (1) Adams, Nathan, (2) Dealey, George B. (North of Royal Lane), (3) Kramer, Arthur (North of Royal Lane), (4) Pershing, John J. (North of Royal Lane), (5) Ray, J. W. (Satellite), (6) Withers, Harry C. (East of Midway Road).

SARAH ZUMWALT (Grades 7-9) — (1) Bushman, W. W. (South of Fordham Road), (2) Ervin, J. N., (3) Pease, Elisha M., (4) Stone, Harry, (5) Darrell, B. F.

SENIOR HIGH SCHOOL
ETHNIC COMPOSITION
Appendix C
1971-72

SCHOOL	BLACK	PCT.	MEX.-AMER.	PCT.	ANGLO	PCT.	TOTAL MIN-ORITY	PCT.	TOTAL ENROLL-MENT
Adams, Bryan	415	11.3	22	.6	3238	88.1	437	11.8	3675
Adamson, W. H.	200	15.4	125	9.6	975	75.0	325	25.0	1300
Carter, David	685	29.97	49	2.14	1551	67.87	734	32.12	2285
Hillcrest	300	12.5	15	.6	2085	86.9	315	13.1	2400
Jefferson, T. J.	355	14.8	112	4.8	1938	80.6	467	19.4	2405
Kimball, J. F.	425	17.5	59	2.4	1941	80.0	484	20.0	2425
Lincoln (9-12)	1900	82.8	120	5.2	275	12.0	2020	88.0	2295
North Dallas	160	12.3	744	57.1	400	30.7	904	69.3	1304
Pinkston, L. G.	841	62.6	311	23.2	191	14.2	1152	85.8	1343
Roosevelt, F. D.	1100	83.1	43	3.3	180	13.6	1143	86.4	1323
Samuell, W. W.	390	17.0	42	1.8	1858	81.2	432	18.8	2290
Seagoville	190	17.0	49	4.4	881	78.6	239	21.3	1120
Skyline	678	28.6	521	22.0	1169	49.4	1199	50.6	2368
South Oak Cliff	2000	96.7	31	1.5	37	1.2	2031	98.2	2068
Spruce, H. Grady	500	22.0	61	2.7	1719	75.3	561	24.6	2280
Sunset	420	23.1	150	8.2	1250	68.7	570	31.3	1820
White, W. T.	642	22.6	20	.7	2180	76.7	662	23.3	2842
Wilson, Woodrow	180	11.4	101	6.4	1299	82.2	281	17.7	1580
TOTAL	11381	30.7	2575	6.9	23167	62.4	13956	37.6	37123

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JUNIOR HIGH SCHOOL ETHNIC COMPOSITION

Appendix D

1971-72

SCHOOL	BLACK	PCT.	MEX.-AMER.	PCT.	ANGLO.	PCT.	TOTAL MINORITY	PCT.	TOTAL ENROLLMENT
Atwell, W. H.	225	16.9	15	1.2	1085	81.9	240	18.1	1325
Browne, T. W.	400	22.6	23	1.3	1347	76.1	423	23.9	1770
Cary, E. H.	250	13.3	127	6.7	1507	80.0	377	20.0	1884
Comstock, E. B.	500	28.4	104	5.9	1156	65.7	604	34.3	1760
Edison, T. A.	895	53.9	650	39.2	115	6.9	1545	93.1	1660
Florence, Fred	400	21.1	42	2.2	1458	76.7	442	23.3	1900
Franklin, Ben	220	14.0	7	.5	1343	85.5	227	14.5	1570
Gaston, W. H.	180	12.6	37	2.6	1213	84.8	217	15.2	1430
Greiner, W. E.	4	.3	180	13.6	1143	86.1	184	13.9	1327
Hill, Robert T.	190	11.8	23	1.4	1402	86.8	213	13.1	1615
Holmes, O. W.	2500	98.4	32	1.3	8	.3	2532	99.7	2540
Hood, J. B.	480	21.5	57	2.6	1693	75.9	537	24.0	2230
Hulcy, D. A.	400	28.6	63	4.5	937	66.9	463	33.1	1400
Long, J. L.	130	9.4	124	9.0	1126	81.6	254	18.4	1380
Marsh, T. C.	250	13.4	19	1.0	1600	85.6	269	14.4	1869
Rusk, T. J.	150	18.4	367	45.1	297	36.5	517	63.5	814
Rylie	0	0	25	4.8	500	95.2	25	4.8	525
Sequoyah	1074	92.3	76	6.5	13	1.1	1150	98.9	1163
Spence, Alex	180	24.2	350	47.0	214	28.8	530	71.2	744
Stockard, L. V.	0	0	190	15.6	1025	84.4	190	15.6	1215
Storey, Boude	1245	73.7	194	11.5	250	14.8	1439	85.2	1689
Walker, E. D.	220	20.6	0	0	850	79.4	220	20.6	1070
Zumwalt, Sarah	1424	98.2	17	1.9	9	.5	1441	99.4	1450
TOTALS	11317	32.96	2722	7.92	20291	59.1	14039	40.9	34330

PAGES BOUND VERTICALLY

In The United States District Court
For The Northern District Of Texas
Dallas Division

EDDIE MITCHELL TASBY, ET AL.,
Plaintiffs,
versus CA No. 3-4211-C

DR. NOLAN ESTES, General Superintendent, Dallas Independent School District, ET AL.,
Defendants.

MEMORANDUM OPINION ON FINAL DESEGREGATION ORDER

August 17, 1971

On July 16, 1971, Memorandum Opinion and Order was entered by this Court finding, among other things, all vestiges of a dual school system have not been eliminated in the Dallas Independent School District (DISD). Reference is made to that Memorandum Opinion and Order for all purposes and it is incorporated herein.

The DISD ranks as the eighth largest school system in the Nation, serving approximately 180,000 students attending 180 campuses, and encompasses 351 square miles extending a distance of 35 miles from its north to its south boundaries. Its scholastic population is comprised of approximately 59% Anglos, 33% Blacks, and 8% Mexican-Americans. After several years of unproductive litigation attempting to desegregate the DISD, finally in 1965 in compliance with the mandate

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handed down in *Britton v. Folsom*, 350 F.2d 1022, the School Board adopted the neighborhood school concept which has been continued up until orders were entered by this Court on August 2, 1971 and August 12, 1971. This neighborhood school concept alone failed to establish a unitary school system.

The July 16 Order of this Court directed the School Board of DISD to file its plan for the establishment of a unitary school system by 10:00 o'clock A.M. Friday, July 23, 1971, with which Order the Board complied. Trial resumed upon the claimed merits and demerits of that plan as being productive of a fully desegregated school system. The Board's plan is designated as Defendants' Exhibit No. 20 in this Record and is entitled "Confluence of Cultures". With appendices, it consists of some 120 pages and is fully expressive of the Board's intention to provide a quality education equally for all students and pupils enrolled in DISD, and I find and hold that the Board of Education of DISD is in good faith and is committed to the principle of equal quality education.

The Texas Educational Desegregation Technical Assistance Center (TEDTAC), pursuant to this Court's Order of October 20, 1970, submitted a plan which could be used to desegregate DISD. This plan was filed by TEDTAC after school officials refused to consult or confer with TEDTAC in regard to some three alternate proposals or plans for the desegregation of DISD. The basic principles which the TEDTAC staff followed in drawing the proposals were to maintain majority white schools and use contiguous pairing wherever possible, with no transportation recommended for

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secondary students. At the secondary levels, desegregation was accomplished by extensive gerrymandering of attendance zone lines, resulting in "strip-zoning". Junior high school zones were drawn to conform as nearly as possible to the Senior high school zones in order to retain the feeder system which both TEDTAC and the School Board deemed essential. At the elementary, level the TEDTAC plan on file proposed contiguous pairing, non-contiguous pairing and grouping of attendance zones. This would have required extensive bussing at the elementary level.

At the trial Mr. James P. Williams, Project Administrator of TEDTAC, positively testified that TEDTAC did not recommend nor advocate the adoption of this plan for a school system of the size and complexity of DISD. Plaintiffs, however, adopted the so-called TEDTAC plan and submitted it as their plan on July 16, 1971, with minor modifications, that is, specifically recommending that Lincoln and North Dallas High Schools remain open as high school facilities and that the Career Development Center at Skyline High School be preserved and that the Pearl C. Anderson school be continued as a Junior High facility. The Court has concluded that to adopt the gerrymandering, pairing, and grouping plan submitted by Plaintiffs, accompanied by the massive cross-town bussing required to implement such a plan, would result in extensive "abrasions and dislocations" and a disruption of the educational process, and is rejected in the light of the teaching of *Allen v. Broward County*, 432 F.2d 362 (5th Cir. 1970), to keep "such problems at a minimum". The School Board's plan for secondary schools was essentially a geographic zoning plan which extended the existing zone lines of previously

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white schools to include contiguous elementary zones in areas with large minority student population and which zoned some Anglo students into previously minority schools. In Dallas, minority ethnic groups are concentrated in the south part of the inner city and in the southwest quadrant of the District in Oak Cliff and West Dallas. The Board's plan resorted to "satelliting" Black neighborhood zones into previously all white schools in the northern and eastern parts of the District. By its Desegregation Order of August 2, this Court proposed satelliting of students at the secondary level to achieve an increase in the ethnic composition, as well as the pairing or grouping of secondary level schools in the Oak Cliff area of Dallas (Southwest quadrant). Because of the demographic patterns of DISD, contiguous pairing could only have been accomplished in the Oak Cliff area and review of the Court's Order produced a situation where many students in Oak Cliff would attend five different schools during the six years of their secondary level education. This pairing would also have had a disruptive effect on extracurricular activities and would also have placed a greater burden on Black students by ordering additional satelliting. This result, in my opinion, is educationally unsound and therefore unfair and unreasonable. Reference is here made to Supplemental Opinion regarding Partial Stay of Desegregation Order, and same is incorporated herein for all purposes. Accordingly, on August 9, 1971, a Stay Order was entered staying the pairing/grouping of secondary students in the Oak Cliff area and also staying the additional satelliting provided in the August 2 Order. Pursuant to that Stay Order, the School Board, on August 12, filed with the Court a new Assignment for Junior and Senior High

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School students as provided in Resolutions adopted on August 11, 1971. By Order dated August 12, 1971, the Resolutions of the Board of Education directing the assignment of Junior and Senior High School students as therein provided were approved by the Court. Racial balance approved and adopted by this Court, taking into account the August 2 Order, the August 9 Stay Order, and the August 12 Order, for Senior and Junior High School students is shown on Appendices A and B attached hereto and made a part hereof. These Orders taken together constitute the final Desegregation Order of this Court.

The adoption of a plan of desegregation for a school system of the size and complexity of DISD has been commented upon briefly. The problems result, of course, from private housing patterns that have come into existence and not from any action of the DISD. The complex school districts bear little resemblance to the factual situation of *Green* or even the fact situation of *Swann* which served 84,000 pupils in 107 schools. As was pointed out by the Supreme Court in *Swann*, "the record of this case reveals the familiar phenomenon that in the metropolitan areas minority groups are often found concentrated in one part of the city. In some circumstances certain schools may remain all or largely of one race until new schools can be provided or neighborhood patterns changed." 28 L.Ed. 2d 1572. In attempting to pattern a remedy for the DISD situation this Court has sought not only to achieve an equal integrated quality education for all students, but has been conscious of the necessity of the stabilization of the private residentail patterns in the district. It is the opinion of this Court that some new approach and solution to this problem must be found.

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The Fifth Circuit has applauded "imaginative and innovative" actions by the courts in this effort. *United States v. Bd. of Baldwin County*, 423 F. 2d 1013, (5th Circuit, 1970); *Bivins v. Bibb County Bd.*, 424 F.2d 97 (5th Circuit, 1970). As an effort in this direction this Court has adopted the so-called "T.V. Plan" with a view to desegregation at the elementary level. The plan of using television in the schools must be credited to Mr. J. "Pete" Williams, Project Administrator of TEDTAC, who testified that after consultation with his staff he was deeply concerned about the desegregation problems of a huge metropolitan center such as Dallas, and he went into seclusion to study the matter and reached the conclusion that the use of television to establish audio and visual contact and communication by the students would be an effective tool of desegregation. In its July 16 Order, this Court suggested to the Board that an investigation be made of the T.V. plan as a means of establishing the required contact between students, and in its desegregation plan filed July 23, the Board submitted the use of T.V. and other audio-visual resources as a part of its plan. The plan adopted by this Court by the August 2 Order varies considerably from that proposed by the Board. The August 2 Order retains the neighborhood school concept for elementary schools but directs the establishment of a clustering of elementary attendance zones in such a manner as to group those elementary schools together so as to provide an approximate 2:1 ratio of Anglo classrooms to minority classrooms and to establish elementary class schedules and courses of study so as to provide each elementary student with a daily minimum of one hour of contact with students of another race, such contact to be a simultaneous two-way oral and visual com-

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munication via television cable between two or more schools. The classrooms of each such elementary school is to be identifiably paired in such a manner that approximately two Anglo classrooms are paired with one minority classroom for the entire academic year with two to seven studio classrooms being established at each elementary school and such studio rooms to be equipped so as to provide the teacher and students seated therein the ability to see and hear the students and teachers in the other paired classrooms who will also be seated in studio rooms at their schools. Additionally, the August 2 Order requires the Board to provide at least one weekly visit of an educational nature during regular school hours between the two or more paired classrooms that daily communicate with each other, such visits providing not less than three hours of personal contact between the paired classrooms. Attached to the Order is Appendix C, suggesting a possible series of clusters which provide the approximate 2:1 ratio, but the Board is given discretion to establish any other set of clusters which might be more technically acceptable and more economically feasible so long as the stated ratio of approximately two to one is maintained.

The Order also provides for the creation of a new administrative position of Cluster Director and outlines the duties and responsibilities of that official. A time schedule is adopted requiring maximum operational level by May 1, 1972, subject to the impossibility of acquisition of materials. A committee is appointed to provide professional leadership to insure that the elementary T.V. plan adopted effectively functions as a tool of desegregation.

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There is no "case authority" for this approach but the Court is convinced that it is far more than "part-time desegregation". This is a guaranteed district wide, every day communication that a minimum of 7 of the approximately 30 hours in the school week will be in this concentrated integrated environment. By the effective method of team teaching these classes will be linked together as one educational unit. The individual students will be on a personal "first name" basis with members of the other ethnic groups. Neither is this purely an educational program, although the use of television as an effective teaching method is gaining recognition throughout the country. This Court is firmly convinced that such a one to one program of physical and electronic communication, when combined with the other desegregation tools of this Order, including a completely integrated secondary system, will be a truly effective tool in eliminating all the vestiges of segregation, root and branch, beginning with the cultural attitudes of elementary children who "have not yet learned prejudice".

In attempting to deal with the massive problems of desegregation of this School district, the Court has ordered

(1) Desegregation of faculty and staff;

(2) The majority to minority transfer option permitting the eligible student to transfer to any school in the District and providing transportation for the transferring student who desires it. Additionally, the Court has offered the incentive of a four-day school week for any high school student exercising this right,

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which could well be appealing not only to black students but also to Anglos. The Board is also directed to give wide publicity of the option and full explanation, with high school teachers assigned the task of being available to explain the advantages of the transfer provision;

(3) By its Confluence of Cultures Program which the Board is ordered to implement, the DISD has undertaken an ambitious program to produce quality integrated education with a view to bringing about communication, harmony and understanding between the different ethnic groups with particular attention to the bi-lingual education program for Mexican-Americans and directing that Mexican-Americans be permitted to transfer to the centers where this program is offered when it does not exist at their schools and providing transportation, if desired;

(4) The Board is ordered to institute and maintain the Compensatory Education Program described on Page 29 of the Board's July 23, 1971 plan with any proposed discontinuance to be first reviewed with the Tri-Ethnic Committee;

(5) To initiate and implement the grade level performance for all economically deprived students described on Page 26 and Appendix H of the Board's July 23 plan;

(6) Consultation and approval of the Tri-Ethnic Committee is required before selecting future school sites or beginning construction and directing that all school construction and site selection shall be done in

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a manner that will prevent the recurrence of a dual school structure;

(7) Transportation on a non-segregated and otherwise nondiscriminatory basis is ordered;

(8) The Board is directed to insure that all extracurricular activities continue on a desegregated basis;

(9) A Tri-Ethnic Committee with new and enlarged powers is created, which committee will review operation of the transportation system, teacher assignment, the majority to minority transfer rule, and the selection of school sites. The committee is to report to the Court on a monthly basis as distinguished from a semi-annual basis and will adivse the Court as to the maintenance of a unitary school system. Adequate office space will be made available for the committee in the Federal Building and the Board is directed to provide sufficient funds for the employment of two secretaries, one of whom will be a bilingual Mexican-American, telephones, and appropriate office equipment and supplies;

(10) The School District is to report on November 1, 1971 and on April 15, 1972, and annually thereafter on April 15 of each succeeding year, as required by *Singleton;* and

(11) In line with the teachings of *Ellis v. Bd. of Public Instruction of Orange County, Fla.*, 423 F.2d 203, calling attention to the following provision in *Green*, ". . . whatever plan is adopted will require evaluation in practice and the Court should retain jurisdiction

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until it is clear that the state-imposed segregation has been completely removed." 391 U.S. at 439, this Court has retained jurisdiction of this case to the end that a unitary school system shall be maintained in the Dallas Independent School District.

The ultimate goal in these cases is to remove all vestiges of a dual system and at the same time truly provide a quality *integrated* educational system. It goes without saying that no such system can be integrated if there are but few remaining white students within the boundaries of the DISD, and this Court hopes to avoid any such loss. The Court is firmly of the opinion that to allow the schools to operate as ordered by the Court in its August 2 Judgment as to elementary schools, and as ordered by the Court in its August 12 Order following the August 9 Stay as to secondary schools, will achieve the desired result — quality integrated education — and this community, black and white, will accept such arrangement and work together for the good of all its citizens.

SIGNED and ENTERED this 17th day of August, 1971.

(Signed) W. M. TAYLOR, JR.
UNITED STATES
DISTRICT JUDGE

N.B. The Clerk of this Court and all interested parties are aware of the directives in the May 26, 1971 letter of the Clerk of the Fifth Court of Appeals to the effect that appeals in these cases are to be processed in accordance with Part iii of *Singleton v. Jackson*, 419 F.2d 1211, and no order in regard thereto by this Court is necessary.

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SENIOR HIGH SCHOOL ETHNIC COMPOSITION

Appendix A

1971-72

SCHOOL	BLACK	PCT.	MEX.-AMER.	PCT.	ANGLO	PCT.	TOTAL MIN-ORITY	PCT.	TOTAL ENROLL-MENT
Adams, Bryan	415	11.3	22	.6	3238	88.1	437	11.8	3675
Adamson, W. H.	200	15.4	125	9.6	975	75.0	325	25.0	1300
Carter, David	685	29.97	49	2.14	1551	67.87	734	32.12	2285
Hillcrest	300	12.5	16	.6	2085	86.9	315	13.1	2400
Jefferson, T. J.	355	14.8	112	4.8	1938	80.6	467	19.4	2405
Kimball, J. F.	425	17.5	59	2.4	1941	80.0	484	20.0	2425
Lincoln (9-12)	1900	82.8	120	5.2	275	12.0	2020	88.0	2295
North Dallas	160	12.3	744	57.1	400	30.7	904	69.3	1304
Pinkston, L. G.	841	62.6	311	23.2	191	14.2	1152	85.8	1343
Roosevelt, F. D.	1100	83.1	43	3.3	180	13.6	1143	86.4	1323
Samuell, W. W.	390	17.0	42	1.8	1858	81.2	432	18.8	2290
Seagoville	190	17.0	49	4.4	881	78.6	239	21.3	1120
Skyline	678	28.6	521	22.0	1169	49.4	1199	50.6	2368
South Oak Cliff	2000	96.7	31	1.5	37	1.2	2031	98.2	2068
Spruce, H. Grady	500	22.0	61	2.7	1719	75.3	561	24.6	2280
Sunset	420	23.1	150	8.2	1250	68.7	570	31.3	1820
White, W. T.	642	22.6	20	.7	2180	76.7	662	23.3	2842
Wilson, Woodrow	180	11.4	101	6.4	1299	82.2	281	17.7	1580
TOTAL	11381	30.7	2575	6.9	23167	62.4	13956	37.6	37123

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JUNIOR HIGH SCHOOL ETHNIC COMPOSITION

Appendix B

1971-72

SCHOOL	BLACK	PCT.	MEX.-AMER.	PCT.	ANGLO	PCT.	TOTAL MIN-ORITY	PCT.	TOTAL ENROLL-MENT
Atwell, W. H.	225	16.9	15	1.2	1085	81.9	240	18.1	1325
Browne, T. W.	400	22.6	23	1.3	1347	76.1	423	23.9	1770
Cary, E. H.	250	13.3	127	6.7	1507	80.0	377	20.0	1884
Comstock, E. B.	500	28.4	104	5.9	1156	65.7	604	34.3	1760
Edison, T. A.	895	53.9	650	39.2	115	6.9	1545	93.1	1660
Florence, Fred	400	21.1	42	2.2	1458	76.7	442	23.3	1900
Franklin, Ben	220	14.0	7	.5	1343	85.5	227	14.5	1570
Gaston, W. H.	180	12.6	37	2.6	1213	84.8	217	15.2	1430
Greiner, W. E.	4	.3	180	13.6	1143	86.1	184	13.9	1327
Hill, Robert T.	190	11.8	23	1.4	1402	86.8	213	13.1	1615
Holmes, O. W.	2500	98.4	32	1.3	8	.3	2532	99.7	2540
Hood, J. B.	480	21.5	57	2.6	1693	75.9	537	24.0	2230
Hulcy, D. A.	400	28.6	63	4.5	937	66.9	463	33.1	1400
Long, J. L.	130	9.4	124	9.0	1126	81.6	254	18.4	1380
Marsh, T. C.	250	13.4	19	1.0	1600	85.6	269	14.4	1869
Rusk, T. J.	150	18.4	367	45.1	297	36.5	517	63.5	814
Rylie	0	0	25	4.8	500	95.2	25	4.8	525
Sequoyah	1074	92.3	76	6.5	13	1.1	1150	98.9	1163
Spence, Alex	180	24.2	350	47.0	214	28.8	530	71.2	744
Stockard, L. V.	0	0	190	15.6	1025	84.4	190	15.6	1215
Storey, Boude	1245	73.7	194	11.5	250	14.8	1439	85.2	1689
Walker, E. D.	220	20.6	0	0	850	79.4	220	20.6	1070
Zumwalt, Sarah	1424	98.2	17	1.9	9	.5	1441	99.4	1450
TOTALS	11317	32.96	2722	7.92	20291	59.1	14039	40.9	34330

In The United States District Court
For The Northern District Of Texas
Dallas Division

SAM TASBY, et al,
Plaintiffs,
versus CA No. 3-4211-C

DR. NOLAN ESTES, et al,
Defendants.

SUPPLEMENTAL OPINION REGARDING PARTIAL STAY OF DESEGREGATION ORDER

August 17, 1971

On August 2, 1971, this Court entered its Desegregation Order in this case. The desegregation plan, filed by DISD, proposed for satelliting of students at the secondary level to achieve an increase in the ethnic composition. In the light of some of the guidelines laid down in *Swann v. Charlotte-Mecklenburg* and many opinions of the Court of Appeals for the Fifth Circuit, the August 2 Order of this Court added to the School Board's plan some pairing/grouping of secondary level schools and additional satelliting of students. This part of the Court's Order directed the movement of in excess of 15,000 Junior and Senior High School students and also overloaded at least one high school by 1,000 students beyond its capacity. Transportation (bussing) was also ordered. The School Board plan would have, through satelliting, caused the movement of approximately 7,000 students.

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Because of the demographic patterns of the Dallas Independent School District, the contiguous pairing of secondary level students could have been accomplished only in the Oak Cliff area of the school district. Contiguous pairing or grouping of secondary level schools in the other sections of DISD could have only produced movement of white students from one school to another, or all Black students from one school to another. A careful review of the Court's Order providing for pairing or grouping of Carter, Kimball and South Oak Cliff High Schools and feeder Junior High Schools produced a situation where many, many students would attend five different schools during the six years of their secondary level education. Such pairing or grouping also would have had a disruptive effect upon the extracurricular activities (athletics, bands, drill teams, and the like), and would have placed a greater burden on Black students through the additional satelliting ordered by the Court on August 2. It appears abundantly in this Record, for example, that South Oak Cliff High School, which is over 90% black, is justifiably proud of its athletic program which has taken its football team twice into the State finals and the movement of its 11th grade students to other high schools would have a harmful effect on its athletic programs. But more important, the pairing of these secondary schools will adversely affect the educational opportunities of these students in that the full and complete academic educational program and curriculum of the DISD in its secondary schools in this section of Dallas will surely be injured if courses available over a three or four year period are in any way limited by the dictates of arbitrary student assignments by grade levels in the secondary schools. The education through a wide course selec-

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tion being available as chosen by the student should not be made to suffer for the purpose of arbitrary racial mixing to alleviate a condition which, in this particular section of the school district, results primarily from private housing patterns coming into existence since 1965 and not from any action of the DISD.

Requiring the attendance of secondary level students at five different schools through six years of education is educationally unsound, therefore unfair and unreasonable. The additional satelliting ordered by the Court on August 2 places more of the burden upon the black students and this is unfair and unreasonable; therefore, for these reasons the Court, on its own Motion, on August 8, 1971, stayed until January 10, 1972 those portions of that Order requiring the pairing or grouping of the three high schools and the Junior High feeder schools in the Oak Cliff area, and that portion of the Order requiring satelliting in addition to that proposed by the Dallas Independent School District School Board.

The August 2 Order of this Court provides new and other powerful tools which the Court firmly believes will bring about a unitary quality education for all students. For example, I have great faith and confidence in the new Majority to Minority Transfer Rule contained in the August 2 Order, which provides the incentive of a four-day school week for high school students. This could well be appealing to both Black and White students and produce a unitary school system. The Board has been ordered to publicize and encourage students to make use of the Majority to Minority Transfer Rule. Desegregation of faculty, of

course, has been ordered and under the watchful eye of a Tri-Ethnic Committee which has been given enlarged powers and duties should produce an equal quality education for all students. For these reasons also, this Court is of the opinion that the parts of the Order referred to above should be stayed until at least January 10, 1972, so that a more accurate evaluation of this Court's Desegregation Order can be made. This Court has endeavored to write a Desegregation Order that would not only produce an equal quality education but would also stabilize housing patterns in this school district and discourage resegregation that has occurred in cities like Atlanta, Washington, D. C., Los Angeles, and others, and is firmly convinced that the new and innovative tools of desegregation adopted by this Court should be given some time for their effectiveness to be determined.

Hence the August 9, 1971 Partial Stay Order.

August 17, 1971.

(Signed) W. M. TAYLOR, JR.
UNITED STATES
DISTRICT JUDGE

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In The United States District Court
For The Northern District Of Texas
Dallas Division

EDDIE MITCHELL TASBY, ET AL,

versus NO. CA-3-4211-C

NOLAN ESTES, ET AL,

CLARIFICATION: RE FORMER PARTIAL STAY

January 7, 1972

On December 28, 1971, the Court conferred with counsel for Plaintiffs and Defendants and advised the parties that as to student assignment in the schools of the Dallas Independent School District that the student assignment plan for elementary schools provided in the Court's August 2, 1971, Judgment and for junior and senior high schools provided in the Court's August 12, 1971, Order, all of which has been in effect since school opened for the school year 1971-72, constitute the student assignment provisions of the Court's Final Desegregation Order now pending on appeal.

The Court futher advised the parties that such Final Desegregation Order is not a temporary or interim plan subject to further action by the Court or the parties and that neither the Court nor the parties are required to take any further action upon expiration of the former partial stay ordered in the Supplemental Order for Partial Stay of Judgment dated August 9, 1971, (except as might hereafter be required by this

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Court in the exercise of its continuing jurisdiction or by the higher Courts).

(Signed) W. M. TAYLOR, JR.
UNITED STATES
DISTRICT JUDGE

APPENDIX "B"

In The United States Court Of Appeals
For The Fifth Circuit

No. 72-1381

EDDIE MITCHELL TASBY, ET AL.,
Plaintiff-Appellants,
versus

NOLAN ESTES, ET AL.,
Defendant-Appellees.

No. 71-2184

EDDIE MITCHELL TASBY, ET AL.,
Plaintiff-Appellants,
versus

NOLAN ESTES, ET AL.,
Defendant-Appellees.

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No. 71-2581

EDDIE MITCHELL TASBY, ET AL.,
Plaintiffs-Appellants-
Cross-Appellees,
versus

NOLAN ESTES, ET AL.,
Defendants-Appellees-
Cross-Appellants.

Appeals from the United States District Court for the Northern District of Texas
(July 23, 1975)

Before WISDOM, COLEMAN and SIMPSON, Circuit Judges.

SIMPSON, Circuit Judge:

These three consolidated appeals require us to evaluate the progress of the Dallas Independent School District (DISD) in eliminating the vestiges of the dual educational system formerly mandated by Texas law. In this task we are guided principally by the teachings of the United States Supreme Court in *Swann v. Charlotte-Mecklenburg Board of Education*, 1971, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554, subsequent Supreme Court decisions, and several of our own decisions, including *United States v. Texas Education Agency*, 5 Cir. 1972, 467 F.2d 848, (motion for clarification denied, 1973, 470 F.2d 1001), *Cisneros v. Corpus Christi Independent School District*, 5 Cir. 1972, 467 F.2d 142, cert. denied 1973, 413 U.S. 922, 93

S.Ct. 3052, 37 L.Ed.2d 1044 and 1973, 413 U.S. 920, 03 S.Ct. 3053, 37 L.Ed.2d 1041, reh. denied 1973, 414 U.S. 881, 94 S.Ct. 31, 38 L.Ed.2d 129, *United States v. Hinds County School Board*, 5 Cir. 1970, 433 F.2d 611; *Singleton v. Jackson Municipal Separate School District*, 5 Cir. 1970, 419 F.2d 1211. For the reasons given below, we hold that the measures taken by the district court in the areas of student assignment and site selection and school construction to transform the DISD into a unitary system are inadequate to right the constitutional wrong denounced by the Supreme Court in *Brown v. Board of Education*, 1954, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873.

STATISTICAL AND PHYSICAL CHARACTERISTICS OF THE DISD

The DISD is the eighth largest urban school district in the United States. It covers an area of approximately 351 square miles and enrolls some 180,000 students. The DISD operates 180 separate academic campuses, had in 1971 a total annual budget in excess of $150,000,000 and an annual operating budget of $106,500,000. The boundaries of the DISD are not coterminous with those of the City of Dallas. According to the 1970 census, over 800,000 people reside within the corporate limits of the City of Dallas and more than 1,000,000 people live in the Dallas metropolitan area. A number of independent school districts (ISD's) are situated in Dallas County in addition to the DISD, including one (Highland Park) located in the City of Dallas and surrounded on all sides by the DISD.

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THE PREVIOUS DESEGREGATION SUIT AGAINST THE DISD

The DISD is no stranger to school desegregation proceedings before this court. Following the Supreme Court's decisions in *Brown I*, supra, and *Brown II*, 1955, 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083, an action was brought in July, 1955, by black children and parents to desegregate the facilities of the DISD. In *Brown v. Rippy*, 5 Cir. 1956, 233 F.2d 796, cert. denied 1956, 352 U.S. 878, 77 S.Ct. 99, 1 L.Ed.2d 79, we reversed an order of the district court dismissing the suit as premature. The following year, in *Borders v. Rippy*, 5 Cir. 1957, 247 F.2d 268, we set aside an order of the district court dismissing the suit for failure of the plaintiffs to exhaust their state administrative remedies. Again in 1957, we set aside a district court order because that court had rather petulantly directed immediate massive desegregation of the DISD without holding hearings, making findings, and directing submission of a plan. *Rippy v. Borders*, 5 Cir. 1957, 250 F.2d 690.

We next dealt with the DISD's desegregation difficulties in 1960 in *Boston v. Rippy*, 5 Cir. 1960, 275 F.2d 850, once more holding the district court in error for not requiring the DISD to submit a desegregation plan. That same year, in *Boston v. Rippy*, 5 Cir. 1960, 285 F.2d 43, we ordered the district court to require the DISD to adopt a "stair-step" plan of desegregation under which one grade per year would be removed from the dual educational structure and administered in a unitary fashion. Such a plan was put into effect. In 1965, however, we found it necessary twice to order the

DISD to desgregate the twelfth grade no later than September of that year. *Britton v. Folsom*, 5 Cir. 1965, 348 F.2d 158; *Britton v. Folsom*, 5 Cir. 1965, 350 F.2d 1022.

The "stair-step" desegregation process we directed in 1960 and implemented by the DISD the following year merely involved the elimination of racial criteria for the admission of students to the DISD's schools. The DISD was not directed to take affirmative action to remove the vestiges of its formerly statutorily-required dual education system through such techniques as "freedom-of-choice", "pairing", or "majority-to-minority transfer program". In fact the DISD took no further steps to eliminate the traces of segregation than required to do by the terms of our 1965 desegregation order.

THE INSTITUTION OF THE PRESENT DESEGREGATION SUIT

The DISD, on October 6, 1970, was named as a party defendant in an action brought by the present plaintiffs, who claimed to represent classes of black and Mexican-American students and parents, requesting the desegregation of the DISD in accordance with post-1965 decisional law. The complaint alleged (without denial on the part of the DISD) that:

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(a) 71 of the DISD's 180 schools were 90% or greater white.[1]

(b) 40 of the DISD's schools were 90% or greater black.

(c) 49 of the DISD's schools' student populations were 90% or greater of minority races (i.e., black and Mexican-American combined).

(d) 91.7% of all black students in the DISD attended schools in which the student body was composed of 90% or greater minority racial makeup.

(e) Less than 3% of all black students in the DISD attended elementary or secondary schools in which the majority of the student body was white.

(f) Only 2% of black elementary students in the DISD attended schools in which the majority of the student body was white.

(g) Of the 37 new schools constructed, or those to which additions had been made, between

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1 For purposes of convenience, throughout this opinion we use the term "white" in the frame of reference used in the pleadings and proceedings below. "White" refers to Caucasian students with Anglo-Saxon (or other non-Spanish surnames) and presumed racial origin. The term is concededly only broadly accurate as applied. For instance, if Juan Garcia married Mary Smith, their offspring would be classified as Mexican-American. On the other hand, if Mary Smith's brother John Smith married Juan Garcia's sister Maria Garcia, their offspring would be classified "white" or "Anglo".

1965 and 1970, 34 had student enrollments 90% or greater black, 90% or greater minority (black and Mexican-American), or 90% or greater white.[2]

The plaintiffs asked the district court for the following relief:

(a) Meaningful desegregation of the DISD.

(b) Assignment of faculty members to each DISD school in proportion to the racial composition of the entire student body of the DISD.

(c) Halting of all site acquisition and school construction activities which would have the effect of increasing or continuing segregation by race within the DISD.

(d) The adoption of policies designed to lower the high drop-out rate among Mexican-American students in the DISD.

THE PRE-TRIAL POSITION OF THE DISD

The DISD moved for summary judgment with respect to two matters: (1) it asserted that since the prior school desegregation proceedings were still pending in the district court the present plaintiffs were barred from maintaining this action; and (2) it

2 The racial composition of the DISD student body during the 1971-1972 academic year was approximately 69% white, 32% black and 8% Mexican-American.

maintained that a school desegregation suit could not be maintained on behalf of Mexican-American students or parents, since such persons were not recognized as a separate racial class. Eventually, both motions were denied by the court below.

Prior to the trial the DISD had steadfastly maintained that all its policies and practices were in full compliance with the 1965 desegregation order entered pursuant to *Britton v. Folsom I and II*, supra, and that no further changes in those policies and practices were required. In addition, DISD asserted that changes in residential patterns in the geographical area covered by the DISD were responsible for the emergence of essentially one-race or minority schools.

THE PRE-TRIAL SCHOOL CONSTRUCTION DISPUTE

On October 6, 1970, the day the complaint was filed, the plaintiffs moved for a preliminary injunction seeking relief against current and future school construction and against further use of the neighborhood pupil assignment system. On November 24, 1970, the district court held a hearing limited to the school construction question and denied all injunctive relief in this respect to the plaintiffs, who appealed to this court from such denial. On June 3, 1971, this panel vacated the judgment of the district court and remanded the matter for further proceedings in accordance with *Swann*, supra. *Tasby v. Estes*, 5 Cir. 1971, 444 F.2d 124.

Following our remand the district court after an evidentiary hearing enjoined future construction activities pending trial of the entire case with the exception of two elementary schools which were being built in black neighborhoods, Jackson and Young elementary schools. The plaintiffs' appeal from the district court's refusal to enjoin further work on those two schools is #71-2184.

TRIAL AND JUDGMENT IN THE DISTRICT COURT

On July 12, 1971, trial began in the district court limited to the single issue of whether the DISD was in compliance with the law. DISD's counsel in opening argument abandoned his previous claim of total compliance and indicated for the first time that the DISD would not oppose faculty desegregation, implementation of a majority-to-minority transfer policy, and the appointment of a bi-racial committee. The DISD's counsel, however, adhered to the position that the DISD's student assignment and school construction policies and practices were in compliance with the law.

At the completion of the trial on July 16, 1971, the district judge issued a memorandum opinion setting forth his factual findings and legal conclusions. With respect to the existence of vestiges of the dual educational system, the opinion noted:

> "When it appears as it clearly does from the evidence in this case that in the Dallas Independent School District 70 schools are 90% or more white (Anglo), 40 schools are 90% or

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more black, and 49 schools with 90% or more minority, 91% of black students in 90% or more of the minority schools, 3% of the black students attend schools in which the majority is white or Anglo, it would be less than honest for me to say or to hold that all vestiges of a dual system have been eliminated in the Dallas Independent School District, and I find and hold that elements of a dual system still remain.

"The School Board has asserted that some of the all black schools have come about as a result of changes in the neighborhood patterns but this fails to account for many others that remain as segregated schools. The defendant School Board has also defended on the ground that it is following a 1965 court order. This position is untenable."

Addressing itself to the impact of post-1965 developments in the law of public school desegregation, the district court observed:

"There have been too many changes in the law even in the Fifth Circuit and it is fairly obvious to me that the defendant School Board and its administration have been as aware of them as I. For example, the case of *Singleton v. Jackson Municipal Separate School District* was handed down in December of 1969. This was the case in which the Court ordered, among other things, desegregation of faculty and other staff, majority to minority transfer policy, transportation, an order with reference

to school construction and site selection, the appointment of bi-racial committees. The Dallas School Board has failed to implement any of these tools or even to suggest that it would consider such plans until long after the filing of this suit and in part after the commencement of this trial."

The district court dealt with the status of Mexican-Americans for purposes of public school desegregation in the following manner:

"It is my opinion and I so hold that Mexican-Americans constitute a clearly separate and clearly identifiable ethnic group. No one ever had any doubt about Lee Trevino's ethnic origin and this is true of many many others. But as was said by Judge Jack Roberts of the Federal Court in Austin, 'But the mere existence of an ethnic group, regardless of tis racial origin, and standing alone, does not establish a case integrating it with the remainder of the school population. Rather, the plaintiff must show that there has been some form of de jure segregation against the ethnic minority.' And I find that the plaintiff Mexican-Americans have failed in maintaining the burden of proof. I would point out, however, that this particular ruling may not be too significant in the light of what I propose to do in this regard and that is any plan or remedy must take the Mexican-American into consideration and there will be the appointment of a tri-ethnic committee as distinguished from a bi-racial advisory committee. . . ."

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THE DISTRICT COURT'S REMEDIAL MEASURES

The district court's opinion-order of July 16, 1971, included a directive to the DISD that it submit a plan for the establishment of a unitary school system by July 23, 1971. The court below gave the DISD some idea of the type of plan it had in mind by means of the following language:

> "Now all of this is not as grim as it sounds. I am opposed to and do not believe in massive cross-town bussing of students for the sole purpose of mixing bodies. I doubt that there is a Federal Judge anywhere that would advocate that type of integration as distinguished from desegregation. There are many many other tools at the command of the School Board and I would direct its attention to part of one of the plans suggested by TEDTAC (Texas Education Desegregation Technical Assistance Center) which proposed the use of television in the elementary grades and the transfer of classes on occasion by bus during school hours in order to enable the different ethnic groups to communicate. How better could lines of communication be established than by saying, 'I saw you on TV yesterday,' and, besides that, a television is much cheaper than bussing and a lot faster and safer. This is in no sense a Court order but is merely something that the Board might consider."

On July 23, 1971, the plaintiffs and the defendant filed their respective plans with the court. The plain-

tiffs' plan was, in all practical respects, similar to the one devised by the TEDTAC staff and which called for the "clustering" and "satelliting" of school attendance zones, along with the utilization of bus transportation of students on a large scale. The DISD submitted an elementary school plan which was essentially similar to the so-called "television plan" developed by Mr. Pete Williams of TEDTAC and mentioned by the district court in its memorandum of July 16, 1971. With respect to secondary schools, the DISD proposed a plan which involved the transportation of some black students from the inner city to outlying schools and which was designed to reduce the percentage of minority students in all schools below the 90% level.

Following the submission of the two plans, the district court directed the parties and several intervenors to meet with him in an effort to arrive at a resolution of the differences in the plans. Four days of negotiations proved unavailing and trial was resuled on July 27, 1971, continuing through July 30, 1971.

The district court entered its judgment on August 2, 1971. With respect to the DISD's elementary schools, the trial court ordered the adoption of the "television plan", the pertinent portions of which follow:

> "A. To establish a clustering of present elementary attendance zones in such a manner as to group those elementary schools together that would provide an approximate 2:1 ratio of Anglo *classrooms* to minority *classrooms*.

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"B. To assign those elementary students residing in the elementary zones for the 1970-71 (sic) school year to the same neighborhood elementary school which served that zone in 1970-71 (except for those elementary schools which upon recommendation of the School Board are closed by this order. Schools which are to be closed are:

Vickery
Stephen J. Hay
Letot

and the students in Vickery are assigned to Hodgkiss, in Stephen J. Hay to Sam Houston, and in Letot to Burnett.

"C. To establish elementary class schedules and courses of study so as to provide each elementary student with a daily minimum of one hour of contact with students of another race. Such contact shall be a simultaneous two-way oral and visual communication via television cable between two or more schools; classrooms of each such elementary school shall be identifiably paired in such a manner so that approximately two Anglo classrooms are paired with one minority classroom for the entire academic year. It is contemplated that from two to seven studio classrooms will be established at each elementary school.

Such studio rooms shall be equipped so as to provide the teacher and students seated therein the ability to see and hear the students and teachers in the other paired classrooms who will also be seated in studio rooms at their schools.

The electronic cable necessary to effectuate this order shall be leased or installed between the elementary schools along with such other equipment (including channel modulators) as shall be deemed most engineeringly feasible to procide the simultaneous two-way oral and visual contact required above.

"D. To provide at least one weekly visit of an educational nature and during regular school hours between the two or more paired classrooms that daily communicate with each other. Such visit shall provide not less than three hours of personal contact between the paired classrooms. Transportation for purposes of implementing this portion of the elementary assignment plan shall be provided forthwith by leasing companies. . . ."

The district court's judgment in dealing with student assignments in the DISD's secondary schools, increased the number of students to be "satellited" over the number envisioned in the DISD's plan and "paired" certain secondary facilities in the Oak Cliff area of Dallas (located south of the Trinity River, in the southwest portion of the City).

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In addition to specifying changes in the student assignments, the district court ordered:

(a) The desegregation of the faculty and staff of the DISD according to the formula mandated in *Singleton v. Jackson Municipal Separate School District*, 5 Cir. 1969, 419 F.2d 1211, 1217-18, reversed and remanded in part on other grounds, 1970, 396 U.S. 290, 90 S.Ct. 608, 24 L.Ed.2d 477, provided, however, that a 10% variance, above and below, in each school would be permitted.

(b) The implementation of a secondary school majority-to-minority transfer program with the incentive of a four-day school week for participating students.

(c) The appointment of a Tri-Ethnic Committee to advise the DISD on desegregation matters.

(d) The adoption of a site selection and school construction policy designed to prevent the recurrence of a dual school structure.[3]

(e) The submission to the district court by the DISD of desegregation reports on

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3 The School Construction and Site Selection portion of the August 2, 1971, order read as follows:

"To consult with and get the approval of the Tri-Ethnic Committee before beginning construction on any school facility or selecting future school sites. Further, all school construction and site selection, including the location of any temporary classrooms in the system shall be done in a matter (sic) that will prevent the recurrence of a dual school structure, once this plan is implemented."

November 1, 1971, on April 15, 1972, and annually thereafter.

The "pairing" provisions dealing with the Oak Cliff area touched off a public furor and on August 9, 1971, the district judge stayed the effect of his August 2, 1971 judgment dealing with assignments to secondary schools in the DISD. The stay order authorized the DISD to reassign the students in the affected "satellite" areas. On August 12, 1971, the DISD submitted a secondary school student assignment plan virtually identical to the Board's original plan (filed on July 23, 1971) and the district court, in an ex parte proceeding, approved that plan. That court on August 17, 1971, released a "Supplemental Opinion Regarding Partial Stay of Desegregation Order" explaining the reasons for its stay of the secondary student assignment portion of its August 2, 1971 judgment until at least January 10, 1972. This opinion asserted that the secondary school student assignment provisions would have disrupted the educational process for the students involved and would have placed an unfair transportation burden upon black students involved in the "satelliting" operation. Although the secondary student assignment provisions of the August 2, 1971 judgment were ordered stayed until January 10, 1972, the language of the August 17, 1971 opinion indicates that the stay is intended to be permanent.

In summary, the district court dealt with the student assignment aspects of desegregation in two ways: (1) the adoption of the "television plan", and (2) the adoption of the DISD's minimal "satelliting" plan.

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While the DISD was successfully obtaining a stay of the district court's secondary student assignment provisions, the plaintiffs were attempting to have the implementation of the elementary "television plan" delayed. On August 9, 1971, the plaintiffs moved the lower court to stay implementation of the "television plan" (which the district court had directed to be operational, if possible, no later than February 1, 1972). The motion for stay was denied the following day. On August 19, 1971 the plaintiffs petitioned this Court pursuant to Rule 8 F.R.A.P. for a stay of the implementation of the "television plan" for the DISD elementary schools. The plaintiffs estimated that the "television plan" would cost at least ten million dollars to install. The following day, August 20, 1971, this panel granted the motion for stay and enjoined the DISD from taking any further steps to implement the "television plan" pending final disposition of an appeal of the district court's desegregation judgment.

During the period in which the district court was considering an appropriate remedial order for the DISD, numerous individuals, groups and Independent School Districts were permitted to intervene in the proceeding. These intervenors directed most of their arguments to a proposal, advanced after entry of the district court's August 2, 1971, judgment that a desegregation plan for the entire Dallas metropolitan area involving numerous independent school districts be devised, thereby spreading the impact of desegregation as widely as possible.

We heard these appeals December 2, 1971, at Houston, Texas. During oral argument, in addition to the parties, these intervenors and several amici curiae

were heard. The appeal from the district court's final school desegregation order is before us as #71-2581.

THE SECOND SCHOOL CONSTRUCTION DISPUTE

At a time subsequent to the entry of the August 2, 1971, desegregation order of the district court, the DISD requested the approval of the Tri-Ethnic Committee with respect to certain site acquisitions, renovations, and new construction projects. On February 7, 1972, the Tri-Ethnic Committee advised the district court that it would not approve any site acquisitions or construction projects until the Court of Appeals had rendered its decision in #71-2581. The DISD then directed its attorneys to seek the approval of the district court for the initiation of the disputed projects. The plaintiffs learned of DISD's intentions and on February 10, 1972, moved in the district court for an injunction against several of the construction and acquisition projects, no objections being voiced as to the remainder. The primary basis for this motion was an assertion that named projects would result in further segregation of the races within the DISD, in violation of applicable law.

The district court took up these matters on February 16, 1972. Dr. Nolan Estes, General Superintendent of the DISD, testified, with regard to the establishment of an attendance zone for a new school in a predominantly Mexican-American residential area, as follows under cross-examination by plaintiffs' counsel, Mr. Cloutman:

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Q: Did the School District offer any of its other considerations in lieu of considering race as a primary factor in designing that new attendance zone?

A: We used the six criteria that were established for developing school attendance zones, one of which, of course, was race. The others, including geographical location, natural barriers, and instructional program, the distance traveled. After considering all of these, including race, it was felt that the present attendance zones as established by the Court on August 2nd for Benito Juarez and Fred Douglass were the ones that were most sound educationally and the ones that were most feasible administratively.

Q: Now, if I remember your testimony at trial on this case, there were, at least five or six criteria then used,or used prior to trial to consider new construction and as I recall race was not one of them?

A: That is right.

Q: You have added race?

A: Yes, sir.

Q: Is race given an overriding consideration over all those other factors?

A: Race is one of the six criteria that we use in establishing attendance zones.

Q: My question calls for a "yes" or "no" answer, Dr. Estes. Was race given an overriding consideration over all those other facts, "yes" or "no".

(Counsel for defendants objects; objection overruled.)

A: Well, the overriding consideration was providing facilities for those students in the attendance zones as established by the Court order on August 2nd.

[pages 54-56, Transcript of Proceedings, No. Ca-3-4311-C.]

At the conclusion of the hearing, the lower court denied the plaintiffs' motion for injunctive relief and gave its approval for the DISD to proceed with the contested projects. The plaintiffs again sought relief under Rule 8, F.R.A.P. from us. On February 22, 1972, we enjoined the DISD pending our disposition of the appeal from proceeding with seven (7) site acquisition, renovation or construction projects. The plaintiffs' appeal from the denial of injunctive relief in this respect is before us as #72-1381.

THE APPELLATE CONTENTIONS OF THE PARTIES

The plaintiffs advance the following arguments in this Court:

(a) The elementary "television plan" adopted below is constitutionally inadequate.

(b) The district court erred in adopting the DISD's inadequate secondary student assignment plan.

(c) The district court, as to site acquisition and school construction, has failed to abide by its own judgment of August 2,

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1971, and the controlling principles of constitutional law.

(d) While the trial court was correct in treating Mexican-Americans as a distinct ethnic group for desegregation purposes, that court erred in holding that the plaintiffs had failed to prove the existence of de jure discrimination in public education against that group on the part of the DISD.

(e) The district court erred in ordering the DISD to submit desegregation progress reports on an annual basis after April 15, 1972, rather than semiannually.

(f) The 10% variation in the racial compositions of faculty staff authorized by the district court constitutes an impermissible deviation from the *Singleton* requirement.

The DISD advances the following contentions:

(a) The elementary "television plan" is constitutionally permissible and highly feasible.

(b) The district court acted properly in adopting the secondary student assignment plan proposed by the DISD; but, if the district court intends to put into effect its original secondary student assignment scheme once the stay expires, it acted improperly.

(c) The district court properly refused the plaintiffs' requests for injunctive relief in #71-2184 and #72-1381 regarding site acquisition and school construction.

(d) The district court erred in treating Mexican-Americans as a distinct ethnic grouping for public school desegregation purposes but correctly held that the Mexican-American plaintiffs in this case had failed to sustain their evidentiary burden with regard to de jure discrimination.

(e) The district court's reporting requirements are in accordance with controlling decisions of this Court.

(f) The district court's faculty and staff desegregation order complies with this Court's mandate in *Singleton*, supra.

Intervenors Oak Cliff Citizens take issue with the desegregation order entered below for the following reasons:

(a) The district court's secondary student assignment plan, which ordered pairing of schools in the Oak Cliff section of Dallas and which was later stayed until at least January 10, 1972, places a disproportionate desegregation burden upon the Oak Cliff section when compared to the desegregation impact projected for most other white sections of the City.

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(b) The district court failed to appoint a proportionate number of representatives from the Oak Cliff section to the Tri-Ethnic Committee established by the judgment of August 2, 1971.

(c) The district court erred in not affording the Oak Cliff section's representatives an apportunity to review its desegregation plan before ordering it into effect.

Intervenors Donald G. Curry and others, residents of recently developed residential areas in the northern portion of the DISD, argue in this Court that any desegregation plan eventually promulgated for the DISD should not apply to their areas because these areas were undeveloped at the time of the *Brown* decisions of the Supreme Court and because these areas could not possibly be tainted with the remnants of the dual school system.

Intervenors Herman Bond and others propose that we remand this cause with directions to join as parties defendant all the independent school district adjacent to the DISD and to formulate a public school desegregation plan which would spread the impact of the creation of a unitary system as widely as possible throughout the Dallas metropolitan area. These intervenors ask also for a remand to the district court with directions to establish north-south school attendance zone boundaries within the City of Dallas as a means of preventing resegregation "south of the river".

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Several independent school districts in the Dallas metropolitan area, in response to the Herman Bond group's suggestion of a desegregation plan for the entire metropolitan area, urge that the adjacent independent school districts have complied fully with federal court orders to desegregate their facilities and that they should not be compelled to participate in the desegregation of the DISD.[4]

THE CONSTITUTIONALITY OF THE ELEMENTARY "TELEVISION" PLAN

In ordering the adoption of the elementary school "television plan", the district court's primary objective was adherence to the "neighborhood school" concept of student assignment. It is undisputed that the "television plan" would not have altered the racial characteristics of the schools operated by the DISD. The Supreme Court has made it clear that nothing less than the elimination of predominantly one-race schools is constitutionally required in the disestablishment of a dual school system based upon segregation of the races. For this reason, the district court's elementary school "television plan" must be rejected as a legitimate technique for the conversion of the DISD from a dual to a unitary educational system.

In *Green v. County School Board of New Kent County, Virginia*, 1968, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716, the Court held that a "freedom of choice" plan did

4 It should be noted at this point that these intervening adjacent ISD's are predominantly white in racial composition. At oral argument it was developed that the high-income, predominantly white Highland Park ISD (entirely surrounded by the DISD) had not intervened in this proceeding.

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not constitute adequate compliance with the school board's responsibility to achieve a system of determining admission to public schools on a nonracial basis. The Supreme Court oserved:

> "The New Kent School Board's 'freedom-of-choice' plan cannot be accepted as a sufficient step to "effectuate a transition' to a unitary system. In three years of operation not a single white child has chosen to attend Watkins school and although 115 Negro children enrolled in New Kent School in 1967 (up from 35 in 1965 and 111 in 1966) 85% of the Negro children in the system still attend the all-Negro Watkins school. In other words, the school system remains a dual system. Rather than further the dismantling of the dual system, the plan has operated simply to burden children and their parents with a responsibility which *Brown II* placed squarely on the School Board. The Board must be required to formulate a new plan and, in light of other courses which appear open to the Board, such as zoning, *fashion steps which promise realistically to convert promptly to a system without a 'white' school and a 'Negro' school, but just schools.*" 391 U.S. at 441-2, 99 S.Ct. at 1696, 20 L.Ed.2d at 725-6 (emphasis added).

We note also the discussion by the Chief Justice of predominantly one-race schools for an unanimous court in *Swann*, supra:

> "In light of the above, it should be clear that the existence of some small number of one-

race, or virtually one-race, schools within a district is not in and of itself the mark of a system which still practices segregation by law. The district judge or school authorities should make every effort to achieve the greatest possible degree of actual desegregation and will thus necessarily be concerned with the elimination of one-race schools. No *per se* rule can adequately embrace all the difficulties of reconciling the competing interests involved; but in a system with a history of segregation the need for remedial criteria of sufficient specificity to assure a school authority's compliance with its constitutional duty warrants a presumption against schools which are substantially disproportionate in their racial composition. Where the school authority's proposed plan for conversion from a dual to a unitary system contemplates the continued existence of some schools that are all or predominantly of one race, they have the burden of showing that such school assignments are genuinely nondiscriminatory. The court should scrutinize such schools, and the burden upon the school authorities will be to satisfy the court that their racial composition is not the result of present or past discriminatory action on their part." 402 U.S. at 26, 91 S.Ct. at 1281, 28 L.Ed.2d at 572.

Addressing the sanctity of the "neighborhood school concept", the Chief Justice wrote: "Desegregation plans cannot be limited to the walk-in school". 402 U.S. at 30, 91 S.Ct. at 1283, 28 L.Ed.2d at 575.

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The district court's elementary school "television plan" may not be justified because of the Supreme Court's realization that some one-race schools may remain in a school system which has become unitary in character. The "television plan" does not attempt to alter the racial characteristics of the DISD's elementary schools. The plan, although novel in approach, is incompatible with all the jurisprudence of the past twenty years as to public school desegregation, and hence fails to pass muster.

THE VALIDITY OF THE DISD'S SECONDARY PLAN

As earlier noted the final judgment is ambiguous with respect to the assignment of secondary school students in the DISD: is the district court's order of August 2, 1971 to be stayed permanently or until January 10, 1972? We have no reason to believe that the stay of the August 2, 1971, secondary school provisions has been lifted and assume for present purposes that the plan submitted by the DISD was adopted by the court below as its final remedial measure in this regard.

The DISD's brief establishes that DISD had an extremely limited objective in mind when it submitted its secondary school student assignment plan to the district court on July 23, 1971:

> "Under *Swann's* remainder (sic) that courts of equity are at work, certainly equity, fairness and logic would suggest and require that if 90% is a ratio to be used to establish vestiges of a dual school system that less than 90% is a

ratio to be used to establish the eleimination of vestiges of a dual system." Main Brief of the DISD, No. 71-2581, App. B, page B-10.

The objective of reducing the proportionate share of a racial group's composition of the student population of a particular school to just below the 90% mark is short of the Supreme Court's standard of conversion from a dual to a unitary system. The 90% figure adverted to by the plaintiffs in this case was clearly utilized only for purposes of emphasis; it was never intended by the plaintiffs to represent the magic level below which a school would no longer be categorized as "one-race". The DISD's approach to the problem of desegregating its secondary schools fails to indicate a *bona fide* effort to comply with the mandates of the Supreme Court. The district court's plan for the desegregation of the DISD's secondary schools must be rejected as constitutionally inadequate.

THE SITE SELECTION SCHOOL CONSTRUCTION CONTROVERSY

Swann, supra, recognized that the selection of sites for new public schools and the abandonment of old facilities frequently are strong influences in fixing the racial characteristics of schools and neighborhoods. With this in mind, the Supreme Court instructed the district courts and local school authorities in the following manner:

"In ascertaining the existence of legally im posed school segregation, the existence of a pattern of school construction and abandonment is thus a factor of great weight. In devising remedies where legally imposed segregation has been established, it is the responsi-

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> bility of local authorities and district courts to see to it that further school construction and abandonment is not used and does not serve to perpetuate or re-establish the dual system. When necessary, district court should retain jurisdiction to assure that these responsibilities are carried out. Cf. United States v. Board of Public Instruction, 395 F.2d 66 (CA 5, 1968); Brewer v. School Board, 397 F.2d 37 (CA 4, 1968)."
> 402 U.S. at 21, 91 S.Ct. at 1278-79, 28 L.Ed.2d at 569-70.

We regard as highly relevant to the cases before us the Supreme Court's approving citation of this Court's decision in *United States v. Board of Public Instruction of Polk County, Florida*, 5 Cir. 1968, 395 F.2d 66. *Polk County* involved a suit filed by Negro residents seeking to enjoin the construction of a new grammar school which the plaintiffs contended would increase racial segregation. We held that where the Board of Education had not taken affirmative action to locate the new school in a manner which would assist in the elimination of the vestiges of the old dual school system, new construction in the county would be delayed until that action was taken. Judge Tuttle stated for us:

> "The appellee contends that inasmuch as the planning for the school was made without reference to race, there was no conscious effort on the part of the Board to perpetuate the dual school system. This does not meet the requirements of the court order. There is an affirmative duty, overriding all other considerations with respect to the locating of new

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> schools, except where inconsistent with 'proper operation of the school system as a whole' to *seek* means to eradicate the vestiges of the dual system. It is *necessary* to give consideration to the race of the students. It is clear from this record that neither the state board nor the appellee sought to carry out this affirmative obligation, before proceeding with the construction of this already planned school."
> 395 F.2d 69. (Emphasis in original).

The Fourth Circuit, in *Brewer*, supra, used somewhat different language to convey the same message as our *Polk County* decision. The plaintiffs in *Brewer* challenged on appeal the district court's approval of the construction of a new high school to replace an old all-Negro facility in Norfolk, Virginia. The appellants claimed that the new school location would perpetuate racial segregation in Norfolk. In remanding the matter to the lower court Judge Butzner, for his circuit, said:

> "The district judge's approval was based largely on the school board's expertise in site location and the fact that a committee of Negro citizens urged construction near the old school. These factors should be given weight, but they are not controlling. In Wheeler v. Durham City Board of Education, 346 F.2d 768 (4th Cir. 1965), we held that a school construction program is an appropriate matter for court consideration and directed that this be developed upon remand. We will follow the same course here. We do not hold that the new school cannot be built near the old, but many

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other factors in addition to the site must be considered to determine whether the new school is located to perpetuate segregation. Among these are the new school's attendance area, whether the school will be designed to accommodate only Negroes or whether it will include white pupils who live nearer to it than to the predominantly white high schools they now attend, whether the racial composition of the faculty will mark it as a Negro school and what practical alternative sites and assignment plans, if any, are available. This catalog is not complete. Doubtless other pertinent factors will be suggested to court and counsel. From all of them the court objectively can determine whether the new school will take its place in a non-discriminatory system or continue *de facto* the city's former *de jure* dual system of white and Negro schools."
397 F.2d at 42.

We noted earlier in this opinion that Dr. Estes, at the February 16, 1972, hearing below, in answer to the question of whether race was given an overriding consideration vis-a-vis all the factors considered by the DISD, stated that: "Well, the overriding consideration was providing facilities for those students in the attendance zones as established by the Court order on August 2nd". The attendance zones established by the August 2, 1971 judgment were, for the most part, the same zones which had been employed by the DISD over previous academic years to implement its "neighborhood school concept". As the district court found in this case, the "neighborhood school concept" has resulted in the perpetuation of the vestiges of the dual school system in the DISD.

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We have not the competence to tell the DISD and the district court where new schools should be built, which facilities should be renovated, and which buildings should be abandoned. But we are nevertheless competent to determine that the school authorities and the district court have not accorded proper weight to the racial composition of student bodies in considering the selection and acquisition of new sites and the construction of new facilities. Accordingly, we hold that the district court erred in ruling adversely to the plaintiffs in #71-2184 and #72-1381, the site selection and school construction appeals. Under this disposition we need not consider the appellants' additional argument that the district court violated the terms of its August 2, 1971 judgment by approving the DISD's site selection and school construction projects despite the Tri-Ethnic Committee's refusal to approve these undertakings.

THE STATUS OF MEXICAN-AMERICANS IN THE DISD

As to the issue of the status of Mexican-Americans in the DISD for the purposes of school desegregation the district judge found that Mexican-Americans did constitute a separate ethnic grouping and would be treated as such for desegregation purposes even though it had not been established at trial that they had been subjected to *de jure* segregation by the DISD. The plaintiffs, in this court, challenge the district court's finding of no history of *de jure* segregation and assert that they were hampered at trial in their efforts to prove such discrimination by the trial judge's refusal to permit the plaintiffs to pursue discovery for the years prior to 1965. But the district court's decision to

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treat Mexican-Americans as a separate ethnic minority group for remedial purposes is of course endorsed by the appellants. The DISD argues that no such class as Mexican-Americans was established at trial and that the DISD was not proved to have practiced *de jure* discrimination against Mexican-Americans.

While the record of the DISD's history of practicing *de jure* discrimination against Mexican-Americans is not as fully developed as we would prefer, we believe that the district court correctly treated Mexican-Americans within the DISD as a separate ethnic minority group for desegregation purposes. Sufficient statistical evidence is available in the record to establish the isolation of Mexican-American students in the DISD from white students and the DISD's practice of "integrating" its Mexican-American students with black students. Sitting en banc, we held in *United States v. Texas Education Agency, Austin Independent School District*, 5 Cir. 1972, 467 F.2d 848, (motion for clarification denied 1973, 470 F.2d 1001) that at least in the State of Texas, segregation of Mexican-Americans in the public schools constitutes a deprivation of the equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution. See also our en banc decision in *Cisneros v. Corpus Christi Independent School District*, supra, both original and specially concurring opinions. Cf. *Keyes v. School District No. 1*, 1973, 413 U.S. 189, 93 S.Ct. 2686, 37 L.Ed. 548; *Hernandez v. Texas*, 1954, 347 U.S. 475, 74 S.Ct. 667, 98 L.Ed.2d 866.

We perceive no error in the decision below to treat Mexican-American students in the DISD as a distinct

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ethnic minority group for purposes of school desegregation.

THE DISTRICT COURT'S REPORTING REQUIREMENTS

The DISD argues on this appeal that the district court correctly interpreted our language in *United States v. Hinds County School Board*, 5 Cir. 1970, 433 F.2d 611, 618, by requiring the DISD to submit desegregation reports on an annual basis after April 15, 1972. We disagree. In *Hinds County*, supra, we directed that semi-annual reports be filed with the district court on the progress made towards conversion to a unitary school system. The lower court's order in this respect is difficult to understand as our order on the prior appeal stated:

> "The district court shall require the school board to file semi-annual reports during the school year similar to those required in United States v. Hinds County School Board, 5 Cir. 1970, 433 F.2d 619."
> *Tasby v. Estes*, 5 Cir. 1971, 444 F.2d 124.

THE DISTRICT COURT'S COMPLIANCE WITH SINGLETON

Our *Singleton* decision, supra, established the following faculty and staff desegregation standards:

> "Effective not later than February 1, 1970, the principals, teachers, teacher-aides and other staff who work directly with children at a

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school shall be so assigned that in no case will the racial composition of a staff indicate that a school is intended for Negro students or white students. For the remainder of the 1969-70 school year the district shall assign the staff described above so that the ratio of Negro to white teachers in each school, and the ratio of other staff in each, are substantially the same as each such ratio is to the teachers and other staff, respectively, in the entire school system."
419 F.2d at 1217-1218.

In its brief, the DISD informs us:

"The District's Superintendent stated that assuming a teacher-ratio of 25% black and 75% white that the provision 'no more than 10% variance, above and below, in each school' (Plan p. 1) would mean a variation of 2 1/2% from 25%; i.e., a variation from 22 1/2 to 27 1/2 on black teachers and 72 1/2 to 77 1/2 for white teachers; that the variance is not to be used to permit a 15% black percentage in a particular building; that the variance is not an effort to dilute the Singleton formula but to allow for practical problems in the school business arising out of availability of teachers, qualification of teachers under state law and the size of the school and faculty needed in some schools, especially the smaller ones. (T. 668-670)."
Brief for the DISD, pp. 43-44.

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We understand that the appellant's position is that if the 10% variation provision in the district court's faculty and staff desegregation order is invoked to permit deviations no greater than those specified in the DISD's brief then, in that event, the plaintiffs-appellants have no objection to the lower court's order. We understand and sympathize with the plaintiffs' reluctance to acquiesce in the language of the district court's order, but view the assurances provided by the DISD in this regard as adequate. Should the DISD welsh on these explicit representations, the district court and eventually this court are available to the plaintiffs for appropriate relief. Accordingly, subject to the DISD's assurances, the faculty and staff desegregation order of the district court will not be disturbed by this court on this appeal.

THE CONTENTIONS OF THE INTERVENORS

Because we have rejected as constitutionally inadequate the district court's elementary and secondary student assignment plans, we pretermit discussion of the objections lodged by the Oak Cliff Citizens to those plans and to the manner in which they were adopted.

We know of no authority requiring the district court to apportion positions on a bi-racial or tri-ethnic committee according to a one-man, one-vote theory. For this reason, we find the Oak Cliff Citizens' objection to the composition of the Tri-Ethnic Committee established by the district court to be without merit.

We are unimpressed with the argument of the Donald G. Curry group of intervenors. It is simply

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irrelevant that the section of the DISD in which they reside was undeveloped at the time *Brown I* was decided. The Curry group's residential area is not thereby insulated from a judicial directive to the DISD to convert from a dual to a unitary school system. In *Swann*, supra, the Supreme Court took notice of the expansion of predominantly white suburban sections far removed from Negro population centers. We find nothing in the *Swann* decision which could be construed as supporting the Curry group's contention. To the contrary, the *Swann* rationale envisions the inclusion of newly developed residential areas within a formerly dual school district in the formulation and implementation of school desegregation plans.

Originally one of the more controversial facets of this complicated proceeding was presented by the position of the Herman Bond group of intervenors that the student assignment aspects be remanded to the district court with directions to join the independent school districts adjacent to the DISD as defendants and to formulate a single public school desegregation plan for the entire metropolitan area of Dallas. Such a course of action involving cross-district bussing and pairing of schools in order to achieve greater desegregation than was possible in the single district comprised of the city of Richmond, Virginia, was sponsored by Judge Merhige in *Bradley v. The School Board of the City of Richmond, Virginia*, E.D. Va. 1972, 338 F.Supp. 67. Judge Merhige's order was reversed by the Fourth Circuit en banc, 462 F.2d 1058 (1972).

The complexity of the issue (and its bearing on *Tasby*) was such that when the United States Supreme Court granted certiorari in *Bradley*, we withheld rul-

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ing in these cases to await the high Court's decision. Our waiting proved unproductive. The Supreme Court, with Mr. Justice Powell taking no part, affirmed *per curiam* by an equally divided Court, *School Board of the City of Richmond v. State Board of Education*, 1973, 412 U.S. 92, 93 S.Ct. 1952, 36 L.Ed.2d 771. It is our understanding that Mr. Justice Powell did not participate because his former law firm was at one time counsel for either the Richmond School Board or the State Board of Education of Virginia.

About this time the issue of a metropolitan interdistrict desegregation plan emerged in a case from another area, the City of Detroit and its environs in Wayne County, Michigan. The district court directed the preparation of such a plan and purchase of school buses to implement it, *Bradley, et al v. Milliken*, E.D. Mich. 1972, 345 F.Supp. 914, after ruling that the Detroit school system was an illegally segregated one, 338 F.Supp. 582, and after an interlocutory appeal to the Sixth Circuit, 468 F.2d 902. The Sixth Circuit en banc affirmed in part, vacated in part, and remanded for further proceedings. But it affirmed the key holding that a constitutionally adequate system of desegregated schools could not be established within the Detroit school district's geographic limits, and that a multi-district metropolitan plan was necessary. *Bradley v. Milliken*, 6 Cir. 1973, 484 F.2d 215.

Again the Supreme Court granted certiorari and we determined to await its ruling. The Supreme Court reversed 5-4, *Milliken, et al. v. Bradley, et al.*, 1974, 418 U.S. 717, 94 S.Ct. 3112, 41 L.Ed.2d 1069.

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The core of the Court's holding in *Bradley*, as explicated for the majority by the Chief Justice is the following:

> The controlling principle consistently expounded in our holdings is that the scope of the remedy is determined by the nature and extent of the constitutional violation. *Swann, supra*, at 16. Before the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial purposes or by imposing a cross-district remedy, it must first be shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district. Specifically it must be shown that racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of inter-district segregation. Thus an inter-district remedy might be in order where the racially discriminatory acts of one or more school districts caused racial segregation in an adjacent district, or where district lines have been deliberately drawn on the basis of race. In such circumstances an inter-district remedy would be appropriate to eliminate the inter-district segregation directly caused by the constitutional violation. Conversely, without an inter-district violation and inter-district effect, there is no constitutional wrong calling for an inter-district remedy.

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> The record before us, voluminous as it is, contains evidence of *de jure* segregated conditions only in the Detroit schools; indeed, that was the theory on which the litigation was initially based and on which the District Court took evidence. See pp. 18-19, *supra*. With no showing of significant violation by the 53 outlying school districts and no evidence of any inter-district violation or effect, the court went beyond the original theory of the case as framed by the pleadings and mandated a metropolitan area remedy. To approve the remedy ordered by the court would impose on the outlying districts, not shown to have committed any constitutional violation, a wholly impermissible remedy based on a standard not hinted at in *Brown I* and *II* or any holding of this Court.

Ibid at 744-745, 94 S.Ct. at 3127, 41 L.Ed.2d at 1091-1092.

There is in this record no suggestion of violation by the outlying independent school districts in Dallas County of these principles so as to warrant imposition of a multi-district plan. The contentions of the Herman Bond group of intervenors are accordingly rejected.

PROCEEDINGS FOLLOWING REMAND

It is clear from the foregoing that further proceedings will be required below. The following comments, even though based upon a stale record, are intended to provide guidance to the district court in its further efforts to dismantle the dual school structure within the DISD.

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In view of the almost twenty years since legal proceedings were initiated to desegregate the DISD by the plaintiffs in *Brown v. Rippy*, supra, both the courts and the DISD have proceeded with "all deliberate speed". *Brown II*, supra. Endurance records perhaps, but not speed records have been set in this and the prior litigation. The "all deliberate speed" timetable has been superseded and the Supreme Court has made it clear that "under explicit holdings of this Court the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools". *Alexander v. Holmes County Board of Education*, 1969, 396 U.S. 19, 20, 90 S.Ct. 29, 24 L.Ed.2d 19.

It is imperative that the dual school structure of the DISD be completely dismantled by the start of the second semester of the 1975-76 academic year. The district court should immediately take the necessary steps, using and adapting the techniques discussed in *Swann*, supra, to make that objective a reality.[5]

To insure that our mandate is carried out in a timely manner, it is directed:

(a) In #71-2184 and #72-1381, the judgments of the district court are reversed and the causes are remanded with directions to evaluate all of the site acquisition, school construction and facility abandonment plans put forward by the DISD in light of the impact

5 We believe that the DISD has sufficient financial resources to comply with this directive. School buses, although not presently owned by the DISD in sufficient numbers to carry out meaningful desegregation can be leased or purchased with the funds which, but for our decision, would have been used to implement the district court's elementary "television plan".

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which these undertakings will have upon the disestablishment of the dual school system. Only those projects which will foster the desegregation process should be approved by the district court and such approval should be given only after full hearing and after the making of findings of fact and conclusions of law regarding each such project.

(b) In #71-2581, the judgment of the district court is vacated and the cause is remanded with directions to formulate, in time for the start of the second semester of the 1975-76 school year, elementary and secondary student assignment plans which comport with the directives of the Supreme Court and of this opinion.

(c) No later than October 15, 1975, the district court should file with the Clerk of this court a detailed progress report, covering the matters discussed in this opinion, concerning the desegregation of the DISD. We will then determine if further action on our part is required to insure the desegregation of the DISD no later than the middle of the 1975-1976 school year.

(d) The district court's *Hinds County* reporting provisions are modified so as to require semi-annual submission of reports to the district court and, as modified, are affirmed.

(e) The district court's decision to treat Mexican-Americans as a distinct ethnic group for purposes of public school desegregation is affirmed.

(f) The district court's faculty and staff desegregation provisions are affirmed, subject to the assurances given by counsel for the DISD discussed *supra*.

(g) The request of the Herman Bond group to remand the cause to the district court for the purpose of formulating a single desegregation plan for the Dallas metropolitan area is denied.

In view of the time factors involved, the Clerk of this Court is directed to issue our mandate immediately.

AFFIRMED in part, REVERSED in part, and REMANDED with directions.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-265

NOLAN ESTES, ET AL,
Petitioners,

versus

EDDIE MITCHELL TASBY, ET AL,
Respondents.

SUPPLEMENTAL BRIEF AMENDING PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Subsequent to the filing of the Petition for Writ of Certiorari and Application for Stay (No. A-146) by Petitioners, the Respondents in their Opposition to Application for Stay drew into question the constitutionality of an Act of Congress affecting the public interest as follows: (p. 4)

> "Moreover, assuming *arguendo* that section 1757 somehow requires a stay of the Court of Appeals' reversal of the trial court, it is clear that an Act of Congress must give way to the

United States Constitution and construction by this Court of that document."

Petitioners recognize that within the meaning of 28 U.S.C. Section 2403 the question of the constitutionality of an Act of Congress affecting the public interest may be raised by any party. *International Ladies' Garment Workers Union v. Donnelly Garment Company*, 304 U.S. 243, 249. However, in their Opposition to Application for Stay, Respondents did not recite that 28 U.S.C. Section 2403 may be applicable and did not state in their Proof of Service that Respondents' Opposition to Application for Stay had been served upon the Solicitor General, Department of Justice, Washington, D.C., 20530, as required by Rule 33 (2)(b).

In order to make sure conformity by some party with the requirements of Rule 33 (2) (b) and in compliance therewith, the Petition for Certiorari filed herein seeking review of the judgment of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on July 23, 1975, is amended to add the following statement:

"STATEMENT UNDER RULE 33 (2) (b)

"Since the proceeding draws into question the constitutionality of Section 258 of the Equal Educational Opportunities Act of 1974, Pub. L. 93-380, Title II, Sec. 258, Aug. 21, 1974, 88 Stat. 520, 20 U.S.C. Section 1757, an Act of Congress affecting the public interest, and neither the United States nor any agency, officer or employee thereof is a party, it is noted that 28 U.S.C. Section 2403 may be applicable.

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"No court of the United States as defined by 28 U.S.C. Section 451 has, pursuant to 28 U.S.C. Section 2403, certified to the Attorney General the fact that the constitutionality of such Act of Congress has been drawn in question."

ADDITIONAL REASON FOR GRANTING THE WRIT

Review of the opinion-mandate of the Court of Appeals is required for a far more important reason than the numbers of children to be transported in the Dallas Independent School District to achieve a unitary school system. The Court of Appeals mandates an order of the District Court requiring transportation of students from one school to another, at the start of the second semester of the 1975-76 school year. The Equal Educational Opportunities Act of 1974 prohibits any order requiring student transportation at the start of the second semester of the 1975-76 school year.

When any "inferior tribunal" created by Congress can violate and ignore — without so much as a passing reference — an Act of Congress expressly restricting that Court's power to make the order in question, then the will of the people through Congress is thwarted and our constitutional government, including the separation of powers, will exist no more.

The fact that the Court of Appeals has completely ignored an Act of Congress limiting its powers suggests enormous opportunities for any judicial officer to rule at his whim without limitation. This nation's great

and unique form of constitutional government would be seriously impaired if Congress, having created a "court" under the Constitution, can impose no limitations or restrictions on the power, authority or jurisdiction of a court so created.

No question is here presented as to the power of the courts to consider and declare a statute enacted by Congress repugnant to the Constitution. This was not done by the Court of Appeals. Here, it did not even bother to declare Section 258 of the Equal Educational Opportunities Act of 1974 unconstitutional, but simply attempted to make that congressional enactment disappear by ignoring and disregarding a valid provision of the supreme law of the land limiting the power of that Court. Laws made by Congress pursuant to the Constitution are a part of the supreme law of the land. (See Article VI, Constitution, *Marbury v. Madison*, 1 Cranch 137, 179, 2 L.Ed. 135, 178.) But the Constitution does *not* provide that a decision of the Court of Appeals is the supreme law of the land. Rather all United States Courts other than the Supreme Court are "inferior courts as the Congress may from time to time ordain and establish". Constitution Article III, Section 1.

Consider how destructive to our form of government is the act of the Court of Appeals in ignoring this congressional legislation. In the area of school desegregation the public is constantly reminded that this is a nation of laws and not of men and that this republic cannot long endure if the orders of courts are not obeyed by all citizens regardless of their own opinions and regardless of the effect upon their daily lives.

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Indeed, at this very time in the City of Dallas responsible citizens are urging this very proposition.

No citizen should be permitted to ignore the law and throw a brick at what that citizen considers to be an unacceptable school bus. No court should be permitted to ignore the law and order a student transported at a time prohibited by law — absent a judicial construction that such law is invalid. No organized society of men can exist without some concept of obedience to law. But when courts, as did the Court of Appeals, completely ignore the law as enacted by Congress and then proceed to violate that law, and there is no redress, then the people of this country are not encouraged to obey the law — or the courts.

CONCLUSION

For the reasons stated herein and in the Petition, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

WARREN WHITHAM,
210 Adolphus Tower
Dallas, Texas 75202

MARK MARTIN
One Main Place
Dallas, Texas 75250

Attorneys for Petitioners

September, 1975

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PROOF OF SERVICE

We, Warren Whitham and Mark Martin, Attorneys for Petitioners herein, and members of the Bar of the Supreme Court of the United States, hereby certify that on the 18th day of September, 1975, we served three copies of the foregoing Supplemental Brief Amending Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit upon the following Counsel for Respondents:

Mr. Edward B. Cloutman, III
8204 Elmbrook Drive
Suite 200
Dallas, Texas 75247

Ms. Sylvia M. Demarest
Dallas Legal Services Foundation, Inc.
912 Commerce Street, Room 202
Dallas, Texas 75202

Ms. Vilma S. Martinez
Mr. Sanford Jay Rosen
Mr. Alan B. Exelrod
Mexican American Legal Defense and
Educational Fund
145 Ninth Street, 2nd Floor
San Francisco, California 94103

Mr. Marvin Leventhal
Anderson and Banks
358 1/2 North Farish Street
Jackson, Mississippi 39202

and upon the following Counsel for the various intervenors:

Mr. Robert H. Mow, Jr.
Mr. Robert L. Blumenthal
One Main Place
Dallas, Texas 75250

Mr. James G. Vetter, Jr.
Suite 920, 555 Griffin Square Building
Dallas, Texas 75202

Mr. Edwin L. Davis
1321 Collum Building
109 North Akard Street
Dallas, Texas 75202

Mr. N. Alex Bickley
City Attorney
Municipal Building
Dallas, Texas 75201

and to the following intervenor pro se:

Mr. James T. Maxwell
4440 Sigma Road, Suite 112
Dallas, Texas 75240

and upon:

The Solicitor General
Department of Justice
Washington, D.C. 20530

and hereby certify that on the above mentioned date we also served:

1. Three copies of the Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit,

2. One copy of Petitioners' Application for Stay of Opinion-Mandate in No. A-146, and

3. One copy of Respondents' Opposition to Application for Stay of Opinion-Mandate in No. A-146,

upon the Solicitor General, Department of Justice, Washington, D.C. 20530, by mailing same to such Counsel at their respective addresses and depositing the same in a United States mail box in an envelope properly addressed to such addresses with first class air mail postage prepaid.

We further certify that all parties required to be served have been served.

_____

WARREN WHITHAM

_____

MARK MARTIN

Attorneys for Petitioners

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

NO. 75-265

NOLAN ESTES, et al

Petitioners,

versus

EDDIE MITCHELL TASBY, et al

Respondents.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS OR ALTERNATIVELY TO DISPENSE WITH PRINTING REQUIREMENTS

COME NOW the respondents herein pursuant to 28 U.S.C. §1915 and Rule 53, Rules of the Supreme Court, to move this Court for an order allowing them leave to proceed in forma pauperis, or alternatively, to dispense with printing requirements for their pleadings herein, and to make their response to Petitioners' Application for Writ of Certiorari in accordance with Rule 53. Respondents show the Court by affidavit that they are persons without financial means to pay for the costs of printing of these proceedings and/or to give sufficient

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Respectfully submitted,

MULLINAX, WELLS, MAUZY & BAAB, INC.
P. O. Box 47972
Dallas, Texas 75247 630-3672

By _____
Edward B. Cloutman, III

and

DALLAS LEGAL SERVICES FOUNDATION, INC.
912 Commerce Street, Room 2002
Dallas, Texas 75202 742-1631

By _____
Sylvia M. Demarest

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STATE OF TEXAS)
)
COUNTY OF DALLAS)

BEFORE ME, the undersigned authority, came and appeared this day SAM TASBY, a respondent in the action now pending before the United States Supreme Court entitled Nolan Estes, et al, Petitioners v. Eddie Mitchell Tasby, et al, Respondents, Number 75-265, and having been duly sworn

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I am SAM TASBY father and next friend of EDDIE MITCHELL TASBY. And we are both respondents in an action pending decision on a Petition for Writ of Certiorari in the Supreme Court of the United States entitled Nolan Estes, et al, Petitioners, v. Eddie Mitchell Tasby, et al, Respondents, Number 75-265. The matter is one involving issues of school

desegregation in the petitioners' school district and who are seeking review of the decision of the United States Court of Appeals for the Fifth Circuit.

Respondents, plaintiff-appellants in the courts below, are persons without money to pay either costs or legal fees incidental to these proceedings. Moreover, we have not paid any such monies to our attorneys or to their offices for costs or legal fees. We cannot afford therefore to pay the costs of this proceeding or for printing or give sufficient surety therefor.

As respondents to this action for Petition for Writ of Certiorari, we contend that the Petition should be denied as presenting no issue requiring review by this Court. The legal issues raised by petitioners herein have been decided time and again and the fact findings of the trial court as reversed or affirmed by the Court of Appeals are not clearly erroneous.

For these reasons I request this Court grant our Motion for Leave to Proceed In Forma Pauperis or Alternatively to Dispense With Printing Requirements pursuant to Rule 53, Rules of the Supreme Court.

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For these reasons I request this Court grant our Motion for Leave to Proceed In Forma Pauperis or Alternatively to Dispense With Printing Requirements pursuant to Rule 53, Rules of the Supreme Court.

Sam Tasby

SAM TASBY

SWORN TO AND SUBSCRIBED before me this 17th day of September, 1975.

Martha Ruiz

Notary Public in and for Dallas County, Texas

SEP 19 1975
OFFICE OF THE CLERK
SUPREME COURT, U.S.

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RESPONDENTS' BRIEF IN OPPOSITION
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Respondents appear herein to oppose the Petition for Writ of Certiorari in the above captioned and numbered cause filed by Nolan Estes, et al, requesting review of the Judgment of the United States Court of Appeals for the Fifth Circuit entered July 23, 1975. Respondents are the plaintiff-appellants in the courts below.

I. QUESTIONS PRESENTED

The issues set out in the Petition for Writ of Certiorari are as follows: (1) whether the district court erred in adopting a minimal student assignment plan together with a visual-audio media communications system for "integrating"

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I. QUESTIONS PRESENTED

The issues set out in the Petition for Writ of Certiorari are as follows: (1) whether the district court erred in adopting a minimal student assignment plan together with a visual-audio media communications system for "integrating" schools, leaving dozens of one-race schools in tact within the petitioner district; and (2) whether Section 258 of the Equal Educational Opportunities Act of 1974, 20 U.S.C. §1757 prohibits the court of appeals and/or district court from

entering any order requiring transportation of students from one school to another prior to the beginning of the next school academic year, that being 1976-1977.

Respondents submit that neither issue or contention forms a basis for this Court granting the Writ of Certiorari prayed for by petitioners.

II. STATEMENT OF THE CASE

Petitioners' statement of the case, while not totally inaccurate, is misleading concerning the ultimate fact conclusions of the courts below. For instance, petitioners represent to this Court that respondents utilized a 90%-10% formula to establish the existence of one-race schools within the DISD. Such was not the case at all. What respondents did offer the trial court were exhibits indicating how many schools were segregated by race to that extent. They never represented to the trial court that such was the measure of determining whether a school was one-race or not. The United States Court of Appeals for the Fifth Circuit concluded that respondents only intended the 90%-10% comparison for illustrative purposes. Respondents submit that this is the only proper conclusion based upon the record evidence before the trial court and the court of appeals.

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II. STATEMENT OF THE CASE

Petitioners' statement of the case, while not totally inaccurate, is misleading concerning the ultimate fact conclusions of the courts below. For instance, petitioners represent to this Court that respondents utilized a 90%-10% formula to establish the existence of one-race schools within the DISD. Such was not the case at all. What respondents did offer the trial court were exhibits indicating how many schools were segregated by race to that extent. They never represented to the trial court that such was the measure of determining whether a school was one-race or not. The United States Court of Appeals for the Fifth Circuit concluded that respondents only intended the 90%-10% comparison for illustrative purposes. Respondents submit that this is the only proper conclusion based upon the record evidence before the trial court and the court of appeals.

Additionally, petitioners will have this Court believe that they have eliminated one-race secondary schools pursuant to the plan adopted by the trial court. Such was and is absolutely not the case. Petitioners have attached on page 93a of their Petition for Writ of Certiorari the senior high, and on page 94a, the junior high compositions

suggested in the plan ultimately adopted by the trial court. These figures are grossly misleading. For one, none of the high schools or junior high schools represented on these pages in fact has experienced the attendance ratio set forth in the tables. Substantially all of the high schools and junior high schools, with a few exceptions, have operated at levels at or near a 90% one-race configuration. Petitioners also do not inform this Court that nealry 100 of the elementary schools operated by the district continued to be populated by students predominantly of one race or another.

The trial court's (and petitioners') approach in "desegregating" the secondary schools was to assign just enough students to create student bodies at or slightly under a 90% one race ratio; that is, they assigned students in such a way that no school was more "integrated" than 90%-10% white to balck or vice versa.

The Fifth Circuit in its opinion setting aside the student assignment plan noted that such plan adopted a neighborhood concept of student assignment. This assignment produced no change in racial characteristics of the one-race elementary schools operated by petitioners. As such, the Court of Appeals found the plan unconstitutional. It noted

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would no longer be categorized as "one-race" (Tasby v. Estes, __F.2d__, slip opinion at 6949, July 23, 1975.) The court of appeals finally concluded that the petitioners' efforts to desegregate at various school facilities failed to indicate a bona fide effort to comply with the mandates of the Supreme Court (Tasby v. Estes, supra, slip opinion at 6949).

If respondents correctly understand the Petition for Writ of Certiorari, no objection is made to the court of appeals determinations concerning site selection-school construction; the status of Mexican-American plaintiffs within the petitioner district; the reporting requirements imposed upon the school district by the court of appeals' opinion; the teacher assignement ratio set out in that opinion, or any matter other than student assignment. For this reason, respondents have confined their remarks to the student assignment portions of the July 23, 1975 Opinion of the United States Court of Appeals for the Fifth Circuit.

III. REASONS FOR DENYING THE WRIT

Petitioners have represented to this Court that there is constitutional authority for allowing a school district such as the DISD to operate literally dozens of one-race schools on the pretext that by and through audio-visual communications students can be integrated. There is no authority in law or in equity to support this conten-

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III. REASONS FOR DENYING THE WRIT

Petitioners have represented to this Court that there is constitutional authority for allowing a school district such as the DISD to operate literally dozens of one-race schools on the pretext that by and through audio-visual communications students can be integrated. There is no authority in law or in equity to support this contention. Clearly, there is no comfort for petitioners in the language of Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971). There is as well no support for petitioners' contentions in any other decision of this Court

or of the United States Court of Appeals for the Fifth Circuit. Quite the contrary, there is ample authority supportive of the decision of the Fifth Circuit reversing the trial court's student assignment plan. See: Green v. County School Board of New Kent County, Virginia, 391 U.S. 430 (1968); Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969); Singleton v. Jackson Municipal Separate School District, 419 F.2d 1211 (5th Cir. 1969); and Flax v. Potts, 464 F.2d 865 (5th Cir. 1972), cert. den. __U.S.__ (1973).

No where does the court of appeals' decision herein conflict with the decision of this Court in Swann v. Mecklenburg Board of Education, supra. Rather, it completely and totally follows the mandate of Swann. When this Court held that the elimination of predominantly one-race schools was a requirement for an integrated school system, it meant precisely that. Clearly, the court of appeals in ordering the dismantlement of the DISD dual system on such basis is not inconsistent with Swann, but rather follows its directions in the most logical sense. Petitioners' construction of Swann to the contrary is at best tortured.

SECTION 258 OF THE EDUCATIONAL OPPORTUNITIES ACT OF 1974 CANNOT PREVENT THE DISMANTLEMENT OF THE

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SECTION 258 OF THE EDUCATIONAL OPPORTUNITIES ACT OF 1974 CANNOT PREVENT THE DISMANTLEMENT OF THE DUAL SCHOOL SYSTEM

This Court in its decision of Alexander v. Holmes County Board of Education, supra, clearly and succinctly held that further delays in the dismantlement of the dual system will not be tolerated by the courts. In so holding, this Court was interpreting the Equal Protection Clause of

the Fourteenth Amendment to the United States Constitution. There is little doubt in constitutional law that should an Act of Congress be inconsistent with the Constitution, or its amendments, the act must give way. Respondents submit that the court of appeals' decision was not inconsistent with the above Act of Congress. Moreover, if petitioners thought the act in question to be controlling they never informed the court of appeals through brief or other means of such position. Petitioners have first represented that notion to this Court. They somehow contend that this statute prevents the order of the court of appeals for the Fifth Circuit dated July 23, 1975 from having operative effect.

The statute in issue does not speak to the court of appeals and its action here at all. The very language of the statute directs its terms to the implementation of student transportation orders contained in a student assignment plan. No transportation plan has been ordered by any court to this date pursuant to the opinion of the Fifth Circuit dated July 23, 1975. As such petitioners' contentions are at best premature.

Respondents submit that the essence of petitioners'

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Respondents submit that the essence of petitioners' statutory claim is a contention that an Act of Congress can alter or impede the Fourteenth Amendment and its requirements. This, respondents submit, cannot be the case. If the statute is intended to delay desegregation of a school district found to be operating a racially based dual system, that statute can not stand constitutional muster.

For the foregoing reasons the Petition for Writ of Certiorari should be denied in all respects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was mailed this 11th day of September, 1975, by United States Mail, postage prepaid, to:

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